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Supreme Court, U.S.
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In the

Supreme Court of the United States

LEONARD WILLIAM HOUSTON a/k/a
Leonard W. Houston,

Petitioner,

-v.-

AAMES FUNDING CORPORATION d/b/a
AAMES HOME LOAN c/o
AMERICA'S SERVICING COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

The United States Constitution protects "due process of law" under the Fifth Amendment and the Fourteenth Amendment as interpreted, and which in accordance has two distinct constitutional doctrines - substantive and procedural, and constitutional reviewable in bankruptcy proceedings.

[*]The issues- Whether the Second Circuit Court can properly make a summary dispositive ruling as a matter of law, by its pronouncement, which improperly affirmed the Judgments of the District Court, that dismissed an untimely filed bankruptcy Notice of Appeal by the Debtor under the Federal Rules of Bankruptcy Procedure 8002 (a) and motion for Rehearing under Rule 801 5; this is "*regardless of*" the issue succinctly raised before the Second Circuit Court, in that said lower court's judgments entered under said rules were without any judicial consideration which had jurisdiction to review the merits of the Debtor's appeal, but failed to consider as to whether the 10-Day period is a "jurisdictional limitation" or merely "an inflexible claim-processing rule," while may be forfeitable if not properly invoked, which said lower court's judgment apparently and directly conflicts with relevant decisions as determined by this Court

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[*] The most authoritative dictionary defines "*regardless of*" as "without regard to." Garner, Bryan A. A Dictionary of Modern Legal Usage New York: Oxford 1987, pp. 313- 14, and 469; being further defined - without taking into account, by Merriam-Webster's Collegiate Dictionary (10thed.) Springfield, Massachusetts, 1995, p.984.

rendered in *Eberhart v. United States*, 546 U. S. 12 (2005) (per curiam), and previously - *Kontrick v. Ryan,* 540 U.S. 443 (2004), applicable under the Rules of Bankruptcy Procedure 8002.

2. Whether the substantive process and procedures that were applied by the lower Court(s) under the prescribed Rules of Bankruptcy Procedure governing the Debtor's Chapter 13 proceedings and pursuant to the Bankruptcy Code, departed from accepted and usual course of judicial proceedings, and thereby misinterpreting the entitlement as to a certain level of Constitutional "due process" in the bankruptcy proceeding. And thus resulted in abridging said principal which did not allow said debtor the fundamental requisite of due process of law, derived by an interpretation of said Constitution that is the opportunity to be heard, and to recognized as an alienable right - . . . the equal protection of the laws.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

U.S. Bank National Association, As Trustee
For Credit Suisse First Boston HEAT 2004-6

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IN THE
SUPREME COURT OF THE UNITED STATES

LEONARD WILLIAM HOUSTON a/k/a
Leonard W. Houston,
Petitioner
v.

AAMES FUNDING CORPORATION d/b/a
AAMES HOME LOAN c/o
AMERICA'S SERVICING COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A, B, and E to the petition are unpublished.

The opinion of the United States District Court appears at Appendix F and G to the petition are unpublished.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Second Circuit decided this case by summary order on July 17, 2007. Petitioner's Appendix A.[†] A timely petition for rehearing and with suggestion for rehearing en banc was denied by the United States Court of Appeals on August 14, 2007. Petitioner's Appendix B.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth and Fourteenth Amendments of the United States Constitution provides in part:

. . . nor * * *deprive any person of life, liberty, or property, without due process of law; . . . nor deny to any person within its jurisdiction the equal protection of the laws;

And appeals having jurisdiction under Title 28, United States Code, Section 158(a) or (b) from a Judgment, Order, or Degree of a Bankruptcy Court. P. L. 103.394, 108 Stat. 4106, effective October 22, 1994 .

[†] Numbers follow by "a" refer to pages in the bound Appendix submitted with this Petition.

STATEMENT OF THE CASE .

On January 31, 2006, the Debtor, Leonard William Houston a/k/a Leonard W. Houston (Petitioner herein) appear before the United States Bankruptcy Court for the Southern District of New York (Cecelia G Morris, Judge), pursuant to Notice for Pre-Trial/Preliminary Hearing for vacating the automatic stay as imposed under the provision of Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a), pursuant to the Voluntary Petition filed under Chapter 13 of Title 11 of the United States Code on August 1, 2005.

The same upon filed application, dated November 29, 2005, to terminate the automatic stay imposed under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a), submitted by the Respondent, Aames Funding Corporation d/b/a Aames Home Loan c/o America's Servicing Company, for cause pursuant to Section 362(d)(1) of the Bankruptcy Code, 11 U.S.C. § 362(d)(1), that was in the absence of specific facts, that immediate and irreparable injury, loss, or damage would result to the movant if relief from the stay was not granted.

Thus, the Bankruptcy Court committed a plain error of law in making ostensible factual finding without an evidentiary record and in the absence of a full evidentiary hearing thereof, and thereby failed to adequately consider the issue of "cause," as to whether or not there was lack of adequate protection of an interest in property of such party in interest, which in deed clearly was the

Respondent's specific burden of proof on the issue of the debtor's equity in the real property. [Section 362(g)(1) of the Bankruptcy Code, 11 U.S.C. § 362(g)(1)]

The Debtor (Petitioner herein) being opposed to such relief from the stay, that under said Section 362(g)(2) of the Bankruptcy Code, 11 U.S.C. § 362(g)(2), was to bear the specific burden of proof on *all* other issues in this non-adversary Pre-Trial/Preliminary Hearing proceeding so as to satisfy his requisite burden.

And in which the Bankruptcy Court did unfairly deny the Debtor's offered of proof in every respect, and thus, abridged the constitutional safe guards of procedural "due process," as guaranteed by the United States Constitution, thereby disregarded the language of that statutory provision and the corresponding Fed. R. Bankr. P. 4001(a), 9014, 7052; *id.* Rule 9014, which further the Advisory Committee Notes Rule 52(a) provides, in pertinent part, that [i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon.

A principal purpose of the requirement for specific factual findings is to inform the appellate court of the basis of the decision and to permit appellate review, which was procedurally absent in the Debtor's case. Thereby, said Bankruptcy Court [Cecelia G. Morris, Judge] rendered an oral Decision and subsequent written Order dated January 31, 2006, with entry thereof, that terminated said automatic stay as against the Respondent herein, pursuant to 11 U.S.C. § 362 (d)(l), cited *inter alia*, only as to "movant's [Aames Funding Corporation d/b/a Aames Home Loan c/o America's Servicing Company] lien interest in the property located at 148 Deer Court, Middletown, New York 10940." Appendix 27a-28a

The Debtor (Petitioner herein) filed by regular mail a statutory Notice of Appeal to the United States District Court for the Southern District of New York, dated February 8, 2006, in the United States Bankruptcy Court for the Southern District of New York (Poughkeepsie Division), that was docketed by said court on February 16, 2006, with respect to the aforesaid Bankruptcy Court's Order that terminated the imposed automatic stay therein, pursuant to Fed R. Bankr P. 8002(a).

Said Debtor's Notice of Appeal was in fact, *pre-matured*, as the Order that terminated the statutory stay was not a "final judgment, order, and/or degree" of the Bankruptcy Court, as therein pursuant to 28 U.S.C.A. § 158(a)(l)(West Supp. 1995) as said order failed to "completely resolve(s) all of the issues pertaining to the movant's discrete claim."

Thus, namely as to *whom* the true party of interest and the true equity security holder with respects to the undisclosed "Assignment of Mortgage" of said Debtor (Petitioner herein) being among other things, a discrete issue at bar, the same, premises under Sections 501 and 502 of the

Bankruptcy Code, 11 U.S.C. § § 501, and 502, to the real property of the Debtor. And the determination as such as to *whom*, fraudulently invoke the jurisdiction of the United States Bankruptcy Court pursuant to the subsequent filing of duplicate Proof of Claims against the aforesaid real property of the Debtor. Appendix: 32a-41a and 52a-107a

Upon the Appeal, thereafter being fully brief and filed, that on April 19, 2006, the United State District Court for the Southern District of New York (William C. Conner, Judge) issued a written Opinion and Order, dismissing the Debtor-Appellant's appeal for lacked of jurisdiction by reason of said Notice of Appeal was not timely filed in accordance with the Fed. R. Bankr. P. 8002(a) - [Ten-Day period of the date of the entry of the judgment appealed from], and thus, Judgment was entered accordingly.

On April 26, 2006, Appellant, Leonard William Houston a/k/a Leonard W. Houston pursuant to Fed. R. Bankr. P. 8015, timely moved by Motion before the United States District Court for the Southern District of New York, to grant a Rehearing and reconsideration of the appeal on the merits.

Thus, on June 7, 2006, said Court denied the motion for rehearing and reconsideration, by reason of the Court found that it did not have jurisdiction to hear the appeal due to debtor's failure to file a timely appeal [Fed. R. Bankr. P. 8002(a)]; an Opinion and Order of said Court was entered by the Clerk of the Court, accordingly. Appendix: 15a-18a

That prior to said motion, on April 25, 2006, Petitioner further appealed was taken from said Order and Judgment thereof, dismissing the appeal to the United States Court of Appeals to the Second Circuit, and thus, listing the aforesaid procedural issues to be raised on said appeal, as well as the applicable substantive standard of review for each proposed issue with service thereof.

On May 22, 2006, Petitioner filed an "Emergency Motion for Stay," pursuant to Rule 8(a) of the Federal Rules of Appellate Procedure for hearing, as to stay further foreclosure proceedings in State Court, as commenced by the Assignor (Respondent herein) pursuant to Article 13, New York Real Property Actions and Proceedings Law, Section 1301 et seq., which was denied without opinion, and Judgment were entered accordingly by the Clerk of said Court.

Petitioner submits, that the Petition for Certiorari brings before this Court substantial and important federal question(s) which require plenary consideration, with briefs on the merits, for their resolution.

Thus, absence of the possibility of harm to Respondent, Aames Funding Corporation d/b/a Aames Home Loan c/o America's Servicing Company, due to the undeniable fact, that they had duly executed a formal "Assignment of Mortgage" pursuant to New York statutory requirements, under oath dated June 4, 2004, with respect to the

Debtor's executed mortgage lien on his principal residence located at 148 Deer Court Drive, Middletown, New York 10940.

Further, said Assignee, US Bank National Association, as Trustee for Credit Suisse of First Boston HEAT 2004-6, has not stated any facts or submitted any moving papers to the lower Courts (i.e., Supreme Court of the State of New York, United States Bankruptcy Court for the Southern District of New York or United States District Court for the Southern District of New York) as to why they should not be *substituted* as Plaintiff in this real property mortgage foreclosure action [i.e., Fed. R. Bankr. P. 7025, and Fed. R. Civil P. 25(c)], pursuant to the applicable statutory law and procedures afforded therein, and now being in default thereof, since on or about January 18, 2005, and thereafter. Appendix: 36a-41a

The United States Bankruptcy Code clearly provides a comprehensive federal system of penalties and protections to govern the orderly conduct of the debtor's affairs and creditors' rights [11 U.S.C. § 101, et seq.], and with respect to the Constitutional principles governing the statutory right of *"due process,"* which has been authoritatively determined by this Court in Chapter 13 bankruptcy proceedings, the Petition should be granted, and a Writ of Certiorari for said relief.

REASONS FOR GRANTING THE PETITION

I. This Court should grant the Petition- to resolve the conflict of decision within this Circuit and doubts and disarray among the other Circuit Courts of Appeals on the issue of jurisdictional defects under Rule 8002(a) of the Federal Rules of Bankruptcy Procedure absence of consistency and uniformity of decision on such issue.

There is a real conflict within this Circuit who has rendered a summary decision in conflict with rulings of the Supreme Court, and that of another federal court of appeals, and where there is existing doubts and disarray among the other Circuit Courts of Appeals regarding the issue which is considerable national importance, and that is one where uniformity counts- whether the late filing deadlines governing a bankruptcy appeal under Federal Rules of Bankruptcy Procedure 8002(a), constitutes a jurisdictional defect that prevent [the Court] from addressing the merits of appeal.

[1]Petitioner has rely on the Supreme Court's cited Opinions in - *Eberhart v. United States*, 546 U.S. 12, 126 S. Ct. 403, 163 L.Ed.2d 14 (2005) (per curiam), and follow by *Kontrick v. Ryan*, 540 U.S. 443, 124 S.Ct. 906, 157 L.Ed.2d 867 (2004) that are the "jurisdictional" challenges. Moreover, the Judgment and Order rendered in the United States District Court for the Southern District for New

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[1] In *Kontrick*, we determined that defenses made available by the time limitations of Federal Rules of Bankruptcy Procedure 4004 and 9006 may be forfeited. 540 U.S., at 458-460. They are not "juisdictional[al]," but are instead "claim-processing rules," that may be "unalterable on a party's application" but "can nonetheless be forfeited if the party asserting the rule waits too long to raise the point." id., at 456. As we recognized in *Kontrick*, court "have more than occasionally used the term "jurisdictional" to describe emphatic time prescriptions in rules of court." 540 U.S., at 454.

And, as stated in the Opinion by the Supreme Court in -Eberhart (per curiam), supra, "cautioned lower federal courts against conflating mandatory with jurisdictional prerequisites to review." 126 S.Ct 403, 405. Thus, the Court cited in its Opinion- *Bowles v. Russell*, 551 U.S.__, 127 S.Ct 2360 (2007), "In recent years, however, we have tried to clean up our language, and until to day we have been avoiding the erroneous jurisdictional conclusions that flow from indiscriminate use of the ambiguous word. Thus, although we used to call the sort of time limit at issue here "mandatory and jurisdictional," *United States v. Robinson*, 361 U.S. 220, 229 (1960). we have recently and repeatedly corrected that designation as a misuse of the "jurisdiction" label. ***Arbaugh***, supra, at 510 (citing ***Robinson*** as an example of improper use of the term "jurisdiction"): *Eberhart v. United States*, 546 U.S. 12. 17-1 § (2005) (per curiam) (same); *Kontrick*, supra, at 454 (same). (Emphasis in original)

York, and affirmed by the Second Circuit Court of Appeals in Petitioner's case has a significant impact involving unsettled questions of federal constitutional law and statutory law not just of said petitioner, but large segment of the population that are deemed Debtors who files bankruptcy petitions under Title 11, United States Code §101, et seq., of the Bankruptcy Code.

Therefore, the federal issue presented for this Court's review is of a broad concern, having existent conflicts among the Courts under the Federal Bankruptcy Law, *i.e.,* "Bankruptcy Code," and "Bankruptcy Rules," etc., which this Court being of sufficient authoritative level to warrant worthy of said Court review.

The Second Circuit Court of Appeals in this case on Petition for a writ of certiorari by Petitioner, Leonard William Houston a/k/a Leonard W. Houston, as against Aames Funding Corporation d/b/a Aames Home Loan c/o America's Servicing Company, Respondents, had *Affirmed* by Summary Order the judgment of United States District Court [William C. Conner, J.] by holding:

> "Additionally, because Aames Funding Corporation objected to Houston's late filing before the District Court, we are not faced with the question of whether the 10-day time limitation is jurisdictional. *(citations omitted)*

> Accordingly, the District Court properly dismissed Houston's appeal regardless of whether the 10-day period is a jurisdictional[2] limitation or merely "an inflexible claim-processing rule.
>
> For those same reasons, the District Court properly denied Houston's motion for Reconsideration [Rule 8015]."

Although no recent decisions by Second Circuit Court have been undertaken to clarify the "distinction" between claim-processing rules and jurisdictional rules, in the absence of relying on this Court's Opinion - *Eberhart v. United States*, 546 U.S. 12, 126 S. Ct. 403 (2005) (per curiam) other than the fact, the longstanding treatment of statutory time limits for taking an appeal as jurisdictional, that was then recently pronounced: [3]

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[2] As The Supreme Court stated in its Opinion - *Bowles v. Russell*, 55 1 U.S.__, 127 S. Ct. 2360 (2007), "Jurisdiction" we have warned several times in the last decade, "is a word of many, too many, meanings." *(citations omitted).*

This variety of meaning has insidiously tempted courts, this one included to engage in "less than meticulous," *Kontrick*, supra 454, sometimes even "profligate. . . use of the term," *Arbaugh*, supra, at 510 (emphasis in original)

[3] As to the dismissal of Appellant's appeal "regardless of whether the 10-day period is a jurisdictional limitation or merely "an inflexible claim-processing rule," Petitioner adopt impart the dissenting Opinion (SOUTER, J.) as deemed evident, and more so in his case from *Bowles* v. *Russell,* 127 S.Ct. 2360,2367 -"It is intolerable for the judicial system to treat people this way," * * *

> The advisory committee's note to Rule 8002 (a) states that the rule is an "adaptation of Rule 4(a) of the Federal Rules of Appellate Procedure. See Fed. R. Bankr. P. 8002 advisory committee's note. It is of course well established that the time limit prescribed by Fed. R. App. P. 4(a) is "mandatory and jurisdictional."

Browder v. Dir., Dep't of Corrs. of Ill., 434 U.S. 257, 264, 98 S.Ct. 556, 54 L.Ed.2d 521 (1978).

> We therefore follow our sister circuits in holding that the time limit contained in Rule 8002(a) is jurisdictional, and that, in the absence of a timely notice of appeal in the district court, the district court is without jurisdiction to consider the appeal, regardless of whether the appellant can demonstrate "excusable neglect."

In re Siemon, 421 F.3d 167, 169 (2d Cir., Aug 26,2005)

Thus, Second Circuit Court of Appeals' decision conflicts with *Eberhart* (per curiam) and the holding and principal issues therein cited by the Supreme Court under *Kontrick v. Ryan*, 540 U.S. 443, 124 S. Ct. 906 (2004):* * *, we determined that defenses made available by the time limitations of Federal Rules of Bankruptcy Procedure . . . and. . .

may be forfeited. 540 U.S., at 458-460. They are not "jurisdiction[al]," but are instead "claim-processing rules," that may be forfeited if the party asserting the rule waits too long to raise the point." *id.*, at 456.

The Supreme Court has held in - *Bowles v. Russell,* 551 U.S.__ , 127 S.Ct. 2360 (2007) that the filing deadlines in the Bankruptcy Rules are "procedural rules adopted by the Court for the orderly transaction of its business" that are "not jurisdictional, and can be relaxed by the Court in the exercise of its discretion." *Kontrick, id.*, at 540 U.S. 454 (quoting *Schacht v. United States,* 398 U.S. 58, at 64 (1970).

Further stated, "Although several of our recent decisions have undertaken to clarify the distinction between claims-processing rules and jurisdictional rules, none of them calls into question our longstanding treatment of statutory time limits for taking an appeal as jurisdictional." Indeed, those decisions have all recognized the jurisdictional significance of the fact that a time limitation is set forth in a statute.[4] In *Kontrick v. Ryan*, 540 U.S. 443

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[4] There is a significant distinction between time limitations set forth in a statute such as [28 U.S.C.] § 2107, which limit a court's jurisdiction, see, e.g. *Kontrick v. Ryan,* 540 U.S. 443, 453,and those based on court rules, which do not, see, e.g. id., 454. *Arbaugh v. Y&H Coup.*, 546 U.S. 500, 505, and *Scarborougk v. Principi*, 541 U.S. 401, 414, distinguished. Because Congress decides, within constitutional bounds, whether federal courts can hear cases at all, it can also determine when, and under what conditions, federal courts can hear them (citation omitted). And when an 'appeal has not been prosecuted in the manner directed, within the time limited by

(2004) we held that failure to comply with the time requirement in Federal Rule of Bankruptcy Procedure 4004 did not affect a court's subject-matter jurisdiction. Critical to our analysis was the fact that "[n]o statute . . . specifies a time limit for filing a complaint objecting to the debtors's discharge." 540 U.S., at 448. Rather, the filing deadlines in the Bankruptcy Rules are "procedural rules adopted by the Court for the orderly transaction of its business" that are not jurisdiction."

Moreover, as held by the Second Circuit Court of Appeals *Zhong v. US. Dept. of Justice*, 480 F. 3d 104 (2006),[5] as to the issue of jurisdictional, - "The Supreme Court in *Eberhart v. United States*, 546 U.S. 12, 126 S.Ct. 403, 405, 163 L.Ed.2d 14 (2005) (per curiam), recently cautioned lower federal courts against conflating mandatory with jurisdictional prerequisites to review." We take the Court's caveat to heart.[480 F.3d 104, at 108]

And the Circuit Court further said that they specifically had recognized the *split* on this issue:

> We are mindful of the Supreme Court's recent admonition that inferior courts must use great caution in distinguishing mandatory from

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the acts of Congress, it must be dismissed for want of jurisdiction."*(citation omitted) Bowles*, supra.

[5] *Zhong*, supra, n.25: * * * As discussed in this opinion, supra 118, "The Supreme Court has recently and powerfully warned us against conflating mandatory and jurisdictional requirements." See, *Eberhart*, 126 S.Ct. at 405.

> jurisdictional rules. See *Eberhart v. United States*, 546 U.S. 12, 126 S. Ct. 403, 405, 163 L. Ed.2d 14 (2005) (per curiam) ("Clarity would be facilitated . . . if courts and litigants used the label "jurisdictional" not for claim-processing rules, but only for prescriptions delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction) falling within a court's adjudicatory authority.") (quoting *Kontrick v. Ryan*, 540 U. S. 443, 455, 124 S.Ct. 906, 157 L.Ed.2d 867(2004).

[480 F.3d 104, 120 and 1211 (emphasis in original)

The Opinion of the Fourth Circuit Court of Appeals on Rehearing En Banc stated - "We conclude, however, that Rule 11(c)(l)(A) does not implicate the district court's subject-matter jurisdiction, a conclusion, that is largely compelled by the Supreme Court's recent decision in *Kontrick v. Ryan,* 124 S.Ct. 906." *Brickwood Contractors v. Datenet Engineering,* 369 F.3d 385 (2004) - Applying the approach of the *Kontrick* court to this case leads us to conclude that the safe-harbor provisions of Rule 11 do not implicate the district court's subject-matter jurisdiction.

The point of law and procedure as cited in this case is that the 21 -day safe harbor provisions under Rule 11(c)(l)(A) of the Federal Rules of Civil Procedure are mandatory, "inflexible claim-processing rules," but are not "jurisdictional." As was noted in the Supreme Court's opinion in *Kontrick*, supra: * * * that "[C]larity would be facilitated if courts and litigants used the label "jurisdictional" not for claim-processing rules, but only for prescriptions delineating the classes of cases (subject matter jurisdiction) and the persons (personal jurisdiction) falling within a court's adjudicatory authority," *id.* at 915. And went on to say - "Given *Kontrick's* admonition that courts rules of procedure "do not create or withdraw federal jurisdiction," 124 S.Ct. at 914, and its directive to use the term "jurisdiction" only in limited circumstances, it is perhaps possible that the Court might begin to describe such rules not as jurisdictional but instead as inflexible claim-processing rules." [6]

The Fifth Circuit Court of Appeals has stated in its opinions – "has traditionally held that [Fed. R. App. P.] 4(b) is jurisdictional and thus cannot be forfeited or waived, so we cannot hear an appeal if a party fails to comply with its timing requirements. The decision in *Eberhart v. United States*, 546 U.S. 12, 126 S.Ct. 403 (2005)(per curiam), however, casts doubt on our traditional view." *United States v.*

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[6] Petitioner contends that the time limitation is not jurisdictional. The emergent distinction, so far as classification of deadlines as jurisdictional or not jurisdictional is concerned, is between those deadlines that govern the transition from one court(or other tribunal) to another, which are jurisdictional, and other deadlines, which are not. *Brickwood Contractors,* supra 392-393.

Leijano-Cruz, 473 F.3 d 571 (2006).[7] Moreover had stated in its decision, "From *Eberhart's* discussion of *Robinson* [361 U.S. 220 (1960)] one might conclude that rule 4(b) is nonjurisdictional, but no court of appeals has yet done so, and we find it unnecessary to take that step here." And went on to state, "Other circuits have recognized that *Eberhart* affects rule 4(b) but have refused to decide whether rule 4(b) is jurisdictional. *See, e.g., United States v. Carelock,* 459 F.3d 437,440 n.6 (3d Cir. 2006).

The Opinion of the Ninth Circuit Court of Appeals - The question we address concerns the application of two recent Supreme Court cases, *Eberhart v. United States,* 126 S.Ct. 403 (2005) (per curiam), and *Kontrick v. Ryan,* 540 U.S. 443 (2004), to Federal Rule of Appellate Procedure ("FRAP") 4(b). We have long assumed that FRAP 4 is, in general, "mandatory and jurisdictional," and therefore not forfeitable or waivable. *Kontrick* and *Eberhart,* however, clarified that procedural rules formerly referred to as "mandatory and jurisdictional" may be, instead, simply "inflexible claim-processing rule[s] mandatory if invoke by a party but forfeitable if not invoked. (*citations omitted*). Looking closely at *Kontrick* and *Eberhart* to determine the proper boundary between the two varieties of procedural standards, we conclude that Rule 4(b) is not jurisdictional, but instead is forfeited if not invoked. *United States v. Sadler*, 480 F. 3d 932,934 (2007)

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[7] Eluterio Leijano-Cruz was sentenced for illegal reentry but did not file a notice of appeal or motion to extend the time to file a notice of appeal within the time set forth in Federal Rule of Appellate Procedure 4(b). The district court *sua sponte* invoked rule 4(b)'s time limit and denied Leijano-Cruz's motion for extension of time to file. Said appellant appeals the denial, arguing that rule 4(b) is a non-jurisdictional claim-processing rule that the government forfeited by failing to object to his motion for extension.

And thus, the Ninth Circuit Court has held in the case-- *First Ave. W Bldg., LLC v. James (In re: One Cast Media Inc.)* 439 F.3d 558 (2006), "Here, however, there is no need to consider the application of Rule 58 as amended to this case under *Kontrick v. Ryan,* 540 U.S. 443 (2004), time constraints contained in the bankruptcy rules are claim-processing rules and do not affect federal subject matter jurisdiction."

The Tenth Circuit Court of Appeals had determined - "* * * we conclude the requirement for a timely notice of appeal in a civil case is a "claim-processing rule" subject to forfeiture under *Eberhart* or *Kontrick* but a jurisdiction prerequisite to our review." *Alva v. Teen Help,* 469 F. 946,948 (2006) And the Circuit Court further stated, "However, two Supreme Court cases appear (at least at first blush) to call into doubt this long line of precedent- "* * * that the timeliness of notices of appeal generally is jurisdictional" but not deciding the issue." *Id.*, 951 and n. 9. And, as were stated by The Eleventh Circuit Court of Appeals - "We are aware that the Supreme Court in *Eberhart v. United States*, 546 U.S. 12, 126 S.Ct. 403 (2005), in concluding that the time requirement set out in Fed R. Crim. P. 33 was not jurisdictional, emphasized that "there is a critical difference between a rule governing subjmatter jurisdiction and an inflexible claim-processing rule." (*citations omitted*). Of course, we will not follow prior panel precedent that has been overruled by a Supreme Court decision, but "[w]ithout a clearly contrary opinion of the Supreme Court of this court sitting en banc, we cannot overrule a decision of a prior panel of this court." *Main Drug, Inc., v. Aetna US. Health, Inc.* __F.3d __ 2007 WL 92756 (11th Cir. Jan. 16, 2007). Furthermore, it was held by the Tenth Circuit in the case - *Ava v. Teen Help,* 469 F.3d 946, at 953-954, "Neither *Eberhart* nor *Kontrick* affects the jurisdictional nature of the timely filing of an civil appeal. *Kontrick* involved bankruptcy rules 4004 and 9006; *Eberhart* involved criminal procedural rules 33 and 45. None of these rules derive expressly from a statute. Rule 4(a), on the other hand, implements 28 U.S.C. § 2107. And that statute is specifically mentioned in *Kontrick* as an example of a jurisdictional provision containing a "built-in time constraint[ ]." 540 U.S. at 453 n. 8, 124 S.Ct. 906." "Even assuming, arguendo, that *Eberhart* can be read as calling into question the jurisdictional nature of 28 U.S.C. § 2107, as well as Rule 4(a), we decline to upset past precedent without an express ruling to that effect."

In sum, that prior to *Eberhart*, it was held that the failure to file a timely notice of appeal [Fed. R. Bankr P. 8002(a)] from the Bankruptcy Court creates a "jurisdictional" defect barring appellate review [28 U.S. C. § 158(a) or (b)]. Under *Eberhart*, the time limits of Rule 8002 are not jurisdictional, but "assure relief to a party properly raising them."

See, Eberhart, 126 S.Ct. 403 at 407 (2005) In so ruling, the Supreme Court therefore looked to its decision in *Kontrick v. Ryan,* 540 U.S. 443,456 (2004), which held that a party may forfeit the defenses made available by the time limitations of Federal Rules of Bankruptcy Procedure.

As was determined with Opinion and Order entered by the District Court for the Southern District of New York - "In the absence of a timely Notice of Appeal, this Court lacks jurisdiction and Debtor's appeal is hereby dismissed." For all of the foregoing reasons, [Fed. R. Bankr. P. 8002(a) - mandates that "notice of appeal shall be filed with the clerk of the court within 10 days of the date of the judgment, order, or decree appealed from."] Appellant Leonard William Houston's appeal is dismissed."

Thus, was affirmed by this Circuit Court of Appeals which held *inter alia,*- "Accordingly, the District Court properly dismissed Houston's appeal regardless of whether the 10-day period is a jurisdictional limitation or merely "an inflexible claim-processing rule." *Kontrick v. Ryan,* 540 U.S. 443,456 (2004); and cited, see also *Eberhart v. United States,* 546 U.S. 12 (2005). Appendix: 4a

The Second Circuit Court of Appeals that *affirmed* by Summary Order the Judgment of the District Court, that included the denial of Houston's motion for reconsideration [Fed. R. Bankr. P. 8015],[8] had committed clear error in holding that it [*i.e.*, District Court] had *no* jurisdiction. Its dismissal of said appeal and denial of the motion to reconsider was an abuse of discretion, absence of the Supreme Court's recent clear admonition that inferior courts must use great caution in distinguishing "mandatory" from "jurisdictional" rules. *See*, *Eberhart v. United States,* 546 U.S. 12, 126 S.Ct. 430, 405, 163 L.Ed.2d 14 (2005) (per curiam).

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[8] On July 27, 2007, the Petitioner submitted a Motion before the Second Circuit to add addendums to Petition for rehearing

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with the suggestion of rehearing en banc, pursuant to Rule 27 of the Federal Rules of Appellate Procedure and the Second Circuit Local Rule 27(c).Therein stated, *inter alia*, that the addendums bear directly on the issues presented by this appeal, and the Debtor-Appellant desire to add them to said entitled Petition and in further support of its argument concerning the import of these addendums that addressed a point of procedural law under the Federal Rules of Bankruptcy Procedure and facts that said Petitioner, Leonard William Houston, Debtor-Appellant in his opinion believes this Court [i.e., Second Circuit Court] has overlooked and/or misapprehended the holdings in the cases therein cited, *Kontrick v. Ryan*, 540 U.S. 443 (2004), and *Eberhart v. United States,* 546 U.S. 12 (2005) (per curiam), in affirming said district court's judgment. Further, said debtor-appellant, believes that the additional addendums in question warrant complete and thorough discussion by The Panel En Banc, considered appropriate. App: 7a-10a

On August 9, 2007 the Panel Judges of the Second Circuit granted said entitled motion for leave to attached addendum with petition for rehearing, with an Order entered on said date accordingly.

II. The issue presented is one of great importance whether District Court's Judgment that was Affirmed by the Second Circuit Court's Summary Order had accorded Constitutional "due process of law" analysis under the decisions cited by the Supreme Court under *Eberhart* and *Kontrick* in distinguishing "mandatory" from "jurisdictional" rules as prerequisites to appeal

The District Court for the Southern District of New York, had held in the case at bar of said Petitioner - "In the absence of a timely Notice of Appeal [Fed. R. Bankr. P. 8002(a)], this Court lacks jurisdiction and Debtor's appeal is hereby dismissed," and *inter alia* cited *In re Siemon*, 421 F.3d 167, 169 (2d Cir. 2005). Here, it was improper for this Court to use "the term jurisdiction[al] to describe emphatic time prescriptions in rules of court, as cited in - *Kontrick v. Ryan,* 540 U.S. 443 at 454.[9] *See* also *Eberhart v. United States*, 546 U.S. 12 (2005) (per curiam). Thus, this Court's jurisdiction to hear said appeal was control by the clarification in *Eberhart* of the term "jurisdictional." See 126 S.Ct. at 404-07. And upon further appeal by said Petitioner, to the Second Circuit Court of Appeals, which cited *inter alia,* in its Summary Order -

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[9] " * * * that "[t]he distinct between jurisdictional rules and inflexible but not jurisdictional timelines rules drawn by *Eberhart* and *Kontrick* turns largely on whether the timeliness requirement is or is not grounded in a statute." *United States v. Sadler*, 480 F. 932, at 936.

"Accordingly, the District Court properly dismissed Houston's appeal regardless of whether the 10-day period is a jurisdictional limitation or merely "an inflexible claim-processing rule." *Kontrick v. Ryan* 540 U.S. 443, 456(2004); see also *Eberhart v. United States*, 546 U.S. 12 (2005)." And further held, "For those same reasons, the District Court properly denied Houston's motion for reconsideration." App: 1a-4a

Thus, the issue becomes what process of law is due, or what procedures are necessary to protect such property interest of the Debtor [i.e., Petitioner herein] as guaranteed under the Fifth and Fourteenth Amendments of the United States Constitution to prevent manifest injustice.

The Supreme Court had stated in *Bowles v. Russell*, 127 S. Ct. 2360 (2007), "in recent decisions, we have clarified that time prescriptions, however emphatic, are not properly typed "jurisdictional." *Arbaugh v. Y & H Corp.*, 546 U.S. 500, at 5 10 (quoting *Scarborough v. Principi,* 541 U. S. 401, at 414). This statement of the Court, and those preceding it for which it stands as a summation, cannot be dismissed as "some dicta," ante, at 4, n. 2 and cannot be ignored on the ground that some of them were made in cases where the challenged restriction was not a time limit, see ante, at 6. By its refusal to come to grips with our considered statements of law the majority leaves the Court incoherent."

Adversely, the Second Circuit erred by emphatically stating, "* * * we are not faced with the question of whether the 10-day time limitation is jurisdictional."[10] *Cf: Bowles v. Russell*, 127 S. Ct. 2360, 2364 (2007); *Zhong v. USDOJ*, 480 F.3d 104, 123-24 (2nd Cir. 2006). Even though the facts and issues were presented on appeal and summarized in the Opinion by the lower court, which the Second Circuit Court of Appeals recited - "Appellant Leonard William Houston, pro se, appeals from the April 19, 2006 judgment of the United States District Court for the Southern District of New York (William C. Conner, J.) which dismissed Houston's bankruptcy appeal for lack of jurisdiction."

As the Supreme Court precisely determined and cited in its Opinion - *Bowles v. Russell*, 127 S.Ct. 2360- Although several of our recent decisions have undertaken to clarify the distinction between claim-processing rules and jurisdictional rules, none of them calls into question our longstanding treatment of statutory time limits for taking an appeal as jurisdictional. Indeed, those decision have also recognized the jurisdictional significance of the fact that a time limitation is set in a statute. In *Kontrick v. Ryan*, 540 U.S. 443 (2004), we held that failure to comply with the time requirement in Federal Rule of Bankruptcy Procedure 4004 did not affect a court's subject-matter jurisdiction. Critical to our analysis was the fact that "[n]o statute . . . specifies a time limit for filing a complaint objecting to the debtor's discharge." 540 U.S.., at 448. Rather, the filing deadlines in the Bankruptcy Rules are "procedural rules adopted by the Court for the orderly transaction of its business" that are "not jurisdictional." *Id.*, at 454 (quoting *Schacht v. United States,* 398 U.S. 58, 64 (1970)). Because "[o]nly Congress may determine a lower federal court's subject-matter jurisdiction," 540 U.S., at 452 (citing U.S. Const., Art. III, § 1) it was improper for courts to use "the term jurisdictional" to describe emphatic time prescriptions in rules of court," 540 U.S. at 4 454. See also *Eberhart v. United States,* 546 U.S. 12 (2005) (per curiam). (emphasis in original)

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[10] Appellant submitted Citation of Supplemental Authorities that cited *inter alia Eberhart* v. *United States*, 546 U.S.12,127 S.Ct. 403 (2005). App: 29a-31a

Accordingly, the Judgment entered by the District Court in the Petitioner's case, dismissing said appeal as untimely, and lack jurisdiction to hear its merits, strongly suggest that this Court believes that appellate time limits are in fact, "jurisdictional" [Fed. R. Bankr. P. 8002(a)]. And believes that they are to be strictly enforced when properly invoked. Further, as to said pending appeal, this Court need not decide whether the relevance of *Eberhart*, supra., has altered the traditional view that compliance with time limits for filing a notice of an initial appeal as in the Petitioner's case, is a "jurisdictional" requirement, which the Supreme Court's Opinion had obligated said Court to reconsider this court's approach to untimely appeals.

Thus, it was affirmed by the Second Circuit Court of Appeals in its Summary Order rendered in said Petitioner's case, even though in the Supreme

Court's Opinion clearly had characterized such time limit, i.e., Fed. R. Bankr. P. 8002, as an "inflexible claim-processing rule," rather than a rule of subject matter jurisdiction, as was cited in *Eberhart v. United States,* 546 U.S. 12, 126 S.Ct. 403, 163 L.Ed.2d 14 (2005) (per curiam).

Therefore, by all the above foregoing substantive reasons, the United States District Court's Judgment that cited, *inter alia*:

> "ORDERED, ADJUDGED AND DECREED: That this bankruptcy appeal is dismissed as it lacks jurisdiction and Debtor's and Appellant Leonard William Houston's appeal be and it hereby is dismissed."

and the subsequent Order entered that denied Houston's motion for Rehearing, affirmed by Second Circuit are *constitutionally infirm* and mandates collateral challenges concerning this jurisdiction[al] issue under aforesaid United States Constitution Amendments.

CONCLUSION

The petition for a writ of Certiorari should be granted and thereafter vacate the July 19, 2007, unpublished Summary Order of the Second Circuit, As an alternative, a ruling of summary reversal and judgment as a matter of law should be granted.

Dated: January 10, 2008

Respectfully submitted,

LEONARD WILLIAM HOUSTON
a/k/a Leonard W. Houston, pro-se
Petitioner
148 Deer Court
Middletown, New York 10940-6867
Telephone No. (845) 343-8923
Facsimile: (845) 342-3114

06-2155-bk
In re Leonard William Houston

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMTTTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 0.23 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE(SUCH AS THEDATABASE AVAILABLE AT HTTP:/MWW.CA2.USCOURTS.GOV/), THE PARTY CITING THE SUMMARY ORDER MUST FILE AND SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED, IF NO COPY IS SERVED BY REASON OF TNE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE

DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 19th day of July, two thousand and seven.

PRESENT:
HON. CHESTER J. STRAUB,
HON. BARRINGTON D. PARKER,
HON. RICHARD C. WESLEY,
Circuit Judges.

UNITED STATES COURT OF APPEALS
FILED
JUL 19 2007
Catherine O'Hagan Wolfe, Clerk
SECOND CIRCUIT

Leonard William .Houston,
Debtor-Appellant,

-v-

Aames Funding Corporation,
doing business as Aames Home Loan,
U.S. Bank National Association, as
Trustee for Credit Suisse First Boston Heat –
2004-6,
Creditors-Appellees.

NO. 06-21 55-bk

Appearing for Debtor-Appellant:
Leonard William Houston, pro se, Middletown, NY.

Appearing for Creditors-Appellees:
Amy E. Przewozny, Esq., of counsel,
STEVEN J. BAUM, P.C., Amherst, NY.

AFTER SUBMISSION AND UPON DUE CONSIDERATION of this appeal from the April 19, 2006 judgment of the United States District Court for the Southern District of New York, it is hereby ORDERED, ADJUDGED AND DECREED that the judgment of the District Court is AFFIRMED.

Appellant Leonard William Houston, pro se, appeals from the April 19, 2006 judgment of the United States District Court for the Southern District of New York (William C. Conner, J*.)*, which dismissed Houston's bankruptcy appeal for lack of jurisdiction. We presume the parties' familiarity with the facts and issues on appeal.

A notice of appeal from a bankruptcy court order must be filed within 10 calendar days of the date that the final order is entered. *See* Fed. R. Bankr. P. 8002(a); *see also* Fed. R. Bankr. P. 9006(a). Since the bankruptcy court terminated the automatic stay on January 31, 2006, Houston had until February 10, 2006 to file his notice of appeal, But he did not file that notice until February 16, 2006 -six days late.

On appeal, Houston does not contest that he filed his notice late. Nor does he provide any explanation for the late filing. Additionally, because Aames Funding Corporation objected to Houston's late filing before the District Court, we are not faced with the question of whether the 10-day time limitation is jurisdictional. C' Bowles v. Russell, 127 S. Ct. 2360, 2364 (2007); *Zhong v. US. DOJ*, 480 F.3d 104, 123-24 2d Cir. 2007). Accordingly, the District Court properly dismissed Houston's appeal regardless of whether the 10-day period is a jurisdictional limitation or merely "an inflexible claim-processing rule." *Kontrick v. Ryan,* 540 U.S.443,456 (2004); see also *Eberhart v. United States*, 546 U.S. 12 (2005). For those same reasons, the District Court properly denied Houston's motion for reconsideration.

Finally, we decline to grant Aames Funding Corporation's request for sanctions because there has been neither "'a separately filed motion [n]or notice from the court.'" *Great Am. Ins. Co. v. M/V Handy Laker,* 348 F.3d 352,354 (2d Cir. 2003) (per curiam) (quoting Fed. R. App. P.

For those reasons, we AFFIRM the judgment of the District Court.

FOR THE COURT:

By: Lucille Carr

Catherine O'Hagan Wolfe, Clerk

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S.COURT HOUSE
40 FOLEY SQUARE, NEW YORK, N.Y. 10007

UNITED STATES COURT OF APPEALS
FILED
OCT 23 2007
Catherine O'Hagan Wolfe, Clerk
SECOND CIRCUIT

umber: 06-cv-1752
WHITE PLAINS)
William Conner

Catherine O'Hagan Wolfe
CLERK OF COURT

Date:
DC Docket Number 06-cv-1752
Docket Number: 06-2155-bk
DC: SDNY (WHITE PLAINS)
Short Title: In Re: Leonard William Houston v.
DC Judge: Honorable William Conner

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 23rd day of October two thousand seven.

In Re Leonard William Houston

A petition for panel rehearing and a petition for rehearing en banc having been filed herein by the appellant William Houston. Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is DENIED.

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

Joy Fallek

Staff
For the Court:
Catherine O'Hagan Wolfe,
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse At Foley Square
40 Centre Street, New York, NY 10007
Telephone 212-857-8500

UNITED STATES COURT OF APPEALS
FILED
JUL 27 2007
Catherine O'Hagan Wolfe, Clerk
SECOND CIRCUIT

MOTION INFORMATION STATEMENT

Docket Number(s): 062155-bk

Motion for:
ADD AN ADDENDUM TO PETITION FOR REHEARING
WITH THE SUGGESTION OF REHEARING *EN BANC*

Set forth below precise, complete statements of relief sought:

DEBROR-APPELLANT PRAYS THAT THIS COURT ISSUE AN ORDER THAT GRANT PERMISSION TO FILE ADDITIONAL ADDENDUMS AS REFERRED TO ABOVE IN FURTHER SUPPORT OF THE ENTITLED PETITION FOR REHEARING WITH THE SUGGESTION OF REHEARING EN BANC, AS FILED ON SAID EVEN DATE

Caption [use short title]
LEONARD WILLIAM HOUSTON A/K/A

Leonard W. Houston.

Moving Party: LEONARD W. HOUSTON
Appellant/Petitioner
MOVING ATTORNEY: ____________________
[name of attorney, with firm, address, phone number and e-mail]

OPPOSING PARTY: AAMES FUNDING CORPORATION
D/B/A AAMES HOME LOAN
C/O AMERICA'S SERVICE COMPANY
OPPOSING ATTORNEY: STEVEN J. BAUM, P.C.
[name of attorney, with firm, address, phone number and e-mail]

LEONARD WILLIAM HOUSTON a/ka
Leonard W. Houston, *Pro-Se*
148 Deer Court
Middletown, New York 10940-6867
Telephone No. (845) 343-8723

AMY E. PRZEWOZNY, ESQ., Of Counsel
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E-Mail: amyp@mbaum.com

United States District Court
Southern District Of New York
WILLIAM C. CONNER, Judge

Court-Judge/ Agency appealed from:

Please check appropriate boxes:

Has consent of opposing counsel:

A. been sought? NO
B. been Obtained? NO
Is oral argument requested? NO
(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes
If yes, enter date July 11, 2007
FOR EMERGENCY MOTIONS, MOTIONS FOR STAY AND INJUNCTIONS PENDING APPEAL:

Has request relief been previously sought in thi
Court?

Has this relief been previously sought?
In this is court?

Requested return date explanation of emergency:
AUG 14, 2007

UNITED STATES COURT OF APPEALS
FILED
AUG 09 2007

Signature of Moving Attorney:
Date: JUL 27, 2007
Has service effected?
[Attach proof of service]

ORDER

Before: Hon Chester J. Straub, Hon. Barrington D. Parker, Hon. Richard C. Wesley, Circuit Judges IT IS HEREBY ORDERED that the motion for leave to attach addendum with petition for rehearing is GRANTED

AUG-9 2007
Date

FOR THE COURT
CATHERINE O'HAGAN WOLFE,
Clerk
by Elizabeth Duwe
Elizabeth Duwe
Acting Motions Staff Attorney

S.D.N.Y.
06-CV-1752
Connor, J.

United States Court of Appeals
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 28th day of August, two thousand and six.

Present:
Hon. Jose A. Cabranes,
Hon. Robert D. Sack,
Hon. Peter W. Hall,
Circuit Judges.

UNITED STATES COURT OF APPEALS
FILED
AUG 2[illegible] 2006
Roseann B. Mac[illegible]
SECOND CIRCUIT

Leonard William Houston,
Debtor-Appellant,
V.
Aames Funding Corporation,
doing business as Aames Home Loan,
U.S. Bank National Association,
as Trustee for Credit Suisse
First Boston Heat 2004-6,.
Creditors-Appellees.

NO.06-2155-bk

Appellant moved for a stay of the execution of judgment did foreclosure of sale of certain real property pending appeal of the district court's judgment dismissing appellant's appeal of an order of the Bankruptcy Court for the Southern District of New York. Upon due consideration, it is ORDERED that the motion is DENIED because appellant has not demonstrated a substantial possibility of success on appeal. See *Cooper v. Town of East Hampton,* 83 F.3d 31, 36 (2d Cir. 1996).In their appellate briefs, the parties are directed to brief, among any other relevant issues, the effect, if any, of *Eberhart v. United States,* ___US___, 126 S.Ct 403 (2005), on the notice of appeal timing requirements found in the Federal Rules of Bankruptcy Procedure. The Clerk's Office will issue a scheduling order in due course.

FOR THE COURT:
Roseann B. MacKenzie, Clerk

By: Lucille Carr

MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT, CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 0.23 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1 IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX ORTO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURT.GOV/), THE PARTY CITING THE SUMMARY ORDER MUST FILE AND SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED. IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH

THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 19th day of July, two thousand and seven.

PRESENT:
HON. CHESTER J. STRAUB,
HON. BARRINGTON D. PARKER
HON. RICHARD C. WESLEY,
Circuit Judges.

United States Court of Appeals
Filed July 19, 2007
Second Circuit
No. 06-2155-bk

Leonard William Houston,
Debtor-Appellant,
v.
Aames Funding Corporation,
doing business as Aames Home Loan,
U.S. Bank National Association,
as Trustee for Credit Suisse First
Boston Heat – 2004-6
Creditors-Appellees.

Appearing for Debtor-Appellant:
Leonard William Houston, *pro se,* Middletown, NY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---x
In re:

LEONARD WILLIAM HOUSTON a/k/a
LEONARD W. HOUSTON,
Debtor.
---x
LEONARD WILLIN HOUSTON a/k/a
LEONARD W. HOUSTON,
Appellant
-against -
AAMES FUNDING CORPORATION
d/b/a AAMES HOME LOAN c/o
AMERICA'S SERVICING COMPANY,
Appellee.
---x

Chapter 13
Bankruptcy Court Case No. 05 B 37138 (CGM)
06 Civ. 1752 (WCC)

OPINION AND ORDER

APPEARANCES:

LEONARD W. HOUSTON
Appellant Pro Se
148 Deer Court
Middletown, New York 10940

STEVEN J. BAUM, P.C.
Attorneys for Appellee
220 Northpointe Parkway
Amherst, New York 14228

AMY E. PRZEWOZNY, ESQ.
Of Counsel

Copies Mailed to Counsel of Record 6/7/06

CONNER, Senior D.J.:
Appellant Leonard William Houston ("Debtor"), proceeding pro se, moves pursuant to FED. R. BANKR. P. 8015 for rehearing and reconsideration of this Court's Opinion and Order dated April 19, 2006 (the "April 19, 2006 Opinion"). On January 31, 2006, United States Bankruptcy Judge Cecelia G. Morris issued an Order terminating an automatic stay instituted as a result of Debtor's Chapter 13 bankruptcy action filed August 1, 2005. Appellee U.S. Bank National Association, as trustee for Credit Suisse First Boston HEAT 2004-6, as assignee of Aames Funding Corporation d/b/a Aames Home Loan, c/o America's Servicing Company ("Creditor"), is a secured creditor of certain real property located in Middletown, New York, owned by Debtor and mortgaged to Creditor in the amount of $144,000.00. Creditor moved the Bankruptcy Court for-and was granted-a termination of automatic stay pursuant to Bankruptcy Rule 4001(a)(1) on the grounds that Debtor failed to maintain post-petition mortgage payments as required under 11 U.S.C. § 1322(b)(5). Debtor appealed the Bankruptcy Court's decision, and on April 19, 2006 this Court dismissed his appeal for lack of jurisdiction. For the following reasons, debtor's motion for rehearing and reconsideration is denied.

DISCUSSION

Under Rule 8015 of the Federal Rules of Bankruptcy, a rehearing may be requested to allow the District Court to review its prior decision. *See In re AppOnline.com, Inc.*, 321 B.R. 614, 614 (E.D.N.Y. 2003). We are directed to Rule 40(a) of the Federal Rules of Appellate Procedure to determine the standard for reviewing a Rule 8015 request. *See In re Wingspread Corp.*, 186 B.R. 803, 803 (S.D.N.Y. 1995). Under Rule 40(a), "[t]he petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition." FED. R. APP. P. 40(a). "'The purpose of a petition for rehearing is to direct the court's attention to some material matter of law or fact which it has overlooked in deciding the case, and which, had it been given consideration, would probably have brought about a different result.'" *Oren v. Kass,* No. 04 CV 4297, 2005 WL 2859964, at *2 (E.D.N.Y. Nov. 1, 2005) (citing *New York v. Sokol*, No. 94 Civ. 7392,1996 WL 42838 1, at *4 (S.D.N.Y. July 31,1996).

Debtor outlines in his papers several issues that were not addressed in the April 19, 2006 Opinion. However, these issues, which pertain to the merits of the original appeal, were never addressed because this Court found that it did not have jurisdiction to hear the appeal due to debtor's failure to file a timely appeal. Debtor has not identified any factual issue or legal authority that contradicts this Court's prior holding. Therefore, we are compelled to deny his request.

CONCLUSION

For the foregoing reasons, the motion of debtor Leonard William Houston for rehearing and reconsideration is denied.

SO ORDERED.

Dated: White Plains, New York
June 7, 2006

William C. Conner

Sr. United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-
---x
IN RE: Leonard William Houston
A/ka Leonard W. Houston,
Debtor,
---x
Leonard William Houston a/k/a
Leonard W. Houston,
Appellant,
-against-

Aames Funding Corporation d/b/a
Aames Home Loan C/O America's
Servicing Company,
Appellee.
---x

06CV 1752 (WCC)

JUDGMENT

Whereas the above entitled action having been assigned to the Honorable William C. Conner, U.S.D.J, and the Court thereafter on April 19, 2006, having handed down-its Opinion and Order #06,0024 WP dismissing the bankruptcy appeal in the absence of a timely Notice of Appeal, this Court lacks jurisdiction and Debtors and Appellant Leonard William Houston's appeal is hereby dismissed it is,

ORDERED, ADJUDGED AND DECREED: That this bankruptcy appeal is dismissed as it lacks jurisdiction and Debtors and Appellant Leonard William Houston's appeal be and it hereby is dismissed.

J. Michael McMahon

J. Michael McMahon,
Clerk of the Court

Dated: White Plains, N.Y.
April 19, 2006

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

---x

In re:
LEONARD WILLIAM HOUSTON a/k/a
LEONARD W. HOUSTON,
Debtor.

---x

LEONARD WILLIAM HOUSTON a/k/a
LEONARD W. HOUSTON,
Appellant,

-against -

AAMES FUNDING CORPORATION d/b/a
AAMES HOME LOAN c/o AMERICA'S
SERVICING COMPANY,
Appellee.

---x

Chapter 13
Bankruptcy Court
Case No. 05 B 37138(CGM)
06 Civ. 1752 (WCC)

OPINION AND ORDER

APPEARANCES:

LEONARD W. HOUSTON
Appellant Pro Se
148 Deer Court
Middletown, New York 10940

STEVEN J. BAUM, P.C.
Attorneys for Appellee

220 Northpointe Parkway
Amherst, New York 14228

AMY E. PRZEWOZNY, ESQ.
Of Counsel

Copies Mailed to Counsel of Record 4/19/06

CONNER, Senior D.J.:

Appellant Leonard William Houston ("Debtor"), proceeding pro se, appeals the January 31, 2006 Order of United States Bankruptcy Judge Cecelia G. Moms terminating the automatic stay that was instituted as a result of Debtor's Chapter 13 bankruptcy action filed August 1, 2005. Appellee U.S. Bank National Association, as trustee for Credit Suisse First Boston HEAT 2004-6, as assignee of Aames Funding Corporation d/b/a Aames Home Loan, c/o America's Servicing Company ("Creditor"), is a secured creditor of certain real property located in Middletown, New York, owned by Debtor and mortgaged to Creditor in the amount of $144,000.00. Creditor moved the Bankruptcy Court for-and was granted-a termination of automatic stay pursuant to Bankruptcy Rule 4001 (a)(1) on the grounds that Debtor failed to maintain post-petition mortgage payments as required under 11 U.S.C. 9 1322(b)(5.).

Creditor now requests that this Court reject Debtor's appeal of that Order on the grounds that Debtor failed to file his Notice of Appeal within ten days of the entry of the Bankruptcy Court order appealed from as required by Bankruptcy Rule

8002(a). For the following reasons, we are compelled to conclude that this Court lacks jurisdiction to hear the appeal.

DISCUSSION

On appeal, a bankruptcy court's legal conclusions are reviewed de novo. See *In re Dawnwood Props./*78, 209 F.3d 114, 116 (2d Cir. 2000). However, the bankruptcy court's findings of fact can't be set aside unless they are clearly erroneous. See FED. R. BANKR. P. 8013; In re *Dawnwood*, 209 F.3d at 116; *see also Gumares Exploration Co. v. Manville Forest Prods. Corp.* (*In re Manville Forest Prods. Corp.*), 896 F.2d 1384, 1388 (2d Cir. 1990).

Of course, a district court must possess jurisdiction over the appeal in the first instance. To that end, Bankruptcy rule 8001(a) provides:

> An appeal from a judgment, order or decree of a bankruptcy judge to a district court or bankruptcy appellate panel... shall be taken by filing a notice of appeal with the clerk within the time allowed by Rule 8002. An appellant's failure to take any step other than timely filing a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal.

FED. R. BANKR. P. 8001(a). Rule 8002(a) mandates that "the notice of appeal shall be filed with the clerk of the court within 10 days of the date of entry of the judgment, order, or decree appealed from." FED. R. BANKR. P. 8002(a). The 10-day period is measured by calendar days, without exceptions for weekends or holidays. *See* FED. R. BANKR. P. 9006(a); *see also One Stop Realtour Place, Inc. v. Allegiance Telecom Liquidating Trust,* 05 Civ. 6861, 2005 WL 3312248, at *1 (S.D.N.Y. Dec 5, 2005). As the Second Circuit recently pronounced:

> The advisory committee's note to Rule 8002(a) states that the rule is an "adaptation" of Rule 4(a) of the Federal Rules of Appellate Procedure. See Fed. R. Bankr. P. 8002 advisory committee's note. It is of course well established that the time limit prescribed by Fed. R. App. P. 4(a) is "mandatory and jurisdictional." *Browder v. Dir., Dep't of Corr. of Ill.,* 434 U.S. 257, 264 (1978) (internal quotation marks omitted). We therefore follow our sister circuits in holding that the time limit contained in Rule 8002(a) is jurisdictional, and that, in the absence of a timely notice of appeal in the district court, the district court is without jurisdiction to consider the appeal, regardless of whether the appellant can demonstrate "excusable neglect."[1]

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[1] FED. R. BANKR. P. 8002(c) permits the extension of time for filing a timely notice of appeal under certain circumstances. Such a request "must be made by written motion filed before

In re Siemon, 421 F. 3d 167, 169 (2d Cir. 2005; *see also In the Matter of Inwood Realty Co.,* 4 B.R. 459, 461 (S.D.N.Y. 1980) (Comer, J.) ("Failure to timely file a notice of appeal is jurisdictional; it deprives the Court of jurisdiction to entertain the merits of appellant's claim.").

Here, Bankruptcy Court Judge Morris entered the Order terminating the § 362(a) automatic stay on January 31, 2006. That gave Debtor until February 10, 2006 to file his Notice of Appeal. Court records indicate that the Notice of Appeal was not filed until February 16, 2006. And while Debtor dated his Notice of Appeal February 8, 2006, this fact is unavailing. *See Matter of Inwood*, 4 B.R. at 461 (for purposes of 10-day period, notice of appeal deemed "filed" on date docketed with court, not date it is mailed); *see also In the Matter of Bad Bubba Racing Prods., Inc.*, 609 F2d. 815, 816 (5th Cir. 1980) ("[D]eposit of notice in the mail is not equivalent to filing it."). Moreover, as this Court has previously noted, "'having chosen to transmit the petition by mail service, (the bankrupt) assumed the risk of an untimely delivery and filing of its petition." *Matter of Inwood,* 4 B.R. at 462 (quoting In re Scheid's, Inc., 342 F. Supp. 290, 291 (E.D. Pa. 1972)).

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the time for filing a notice of appeal has expired, except that such a motion filed not later than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglected." FED. R. BANKR. P. 8002(c)(2). "Nothing in the record demonstrates that the Appellant complied with the requirements under Rule 8002(c)." *Johnson v. 1187 Tenants Group H.D.F.C.*, No. 00 Civ. 4298, 2001 U.S. Dist. LEXIS 3662, at *4n.5 (S.D.N.Y Mar. 29, 2001)

In the absence of a timely Notice of Appeal, this Court lacks jurisdiction and Debtor's appeal is hereby dismissed.[2]

CONCLUSION

For all of the foregoing reasons, Appellant Leonard William Houston's appeal is dismissed.

SO ORDERED.

Dated: White Plains,
New York April 19, 2006

William C. Conner

Sr. United States District Judge

---

[2] Debtor's pro se status does not "serve as a basis to overlook this jurisdictional defect." *One Stop Realtour Place*, 2005 WL 33 12248, at *1.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
--x
In Re

LEONARD WILLIAM HOUSTON
AKA LEONARD W. HOUSTON

Debtor.
--x

Case No.: 05-37138-CGM
(Chapter 13)
Assigned to:
Hon. CECELIA G. MORRIS
Bankruptcy Judge

ORDER TERMINATING AUTOMATIC STAY

Upon the motion of AAMES FUNDING CORPORATION D/B/A AAMES HOME LOAN C/O AMERICA'S SERVICING COMPANY., dated the 29th day of November, 2005, seeking relief from automatic stay, opposition having been sent on the 6TH day of December, 2005 and supplemental opposition having been filed on 8th day of December, 2005 by the Debtor, Leonard William Houston, and after a hearing this date attended by movant's attorney Martin J. Goldstein, Esq., Steven J. Baum, P.C. and the Debtor, Leonard William Houston, and, over the opposition of the Debtor; it is hereby

ORDERED, that the automatic stay instituted upon filing of-the within bankruptcy case is hereby terminated pursuant to 11 U.S.C. §362(d)(1) as to movant's lien interest in the property located at 148

DEER COURT, MIDDLETOWN, NY 10940, and movant shall account to this estate for any surplus proceeds realized after sale.

DATED: Poughkeepsie, New York
January 31, 2006

S/Cecelia Monis
HON. CECELIA G. MORRIS
United States Bankruptcy
Judge

LEONARD W. HOUSTON

148 DEER COURT
MIDDLETOWN, NEW YORK 10940
TELEPHONE NO. (845) 343-8923
E-MAIL:
LENNY.HOUSTON@YAHOO.COM

June 4, 2007

Clerk's Office
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
United States Courthouse
40 Foley Square
New York, New York 10007

Re: Debtor-Appellant's Citation of Supplemental Authorities [2nd Cir. Local Rule 28(j)]:

Eberhart v. United States
546 U.S. 1, 127 S.Ct. 403 (2005)

In re:

Court Docket Number: 06-2 155-bk
Leonard William Houston, *Appellant* -against
Aames Funding Corporation d/b/a Aames
Home Loan, et al., *Appellee*

Dear Sir:

In accordance with Second Circuit Local Rule 28 (j), Appellant submits this letter as citation of supplemental authorities which the above cited case was decided in the United States Supreme Court. That said issues by this Court, was whether "non-compliance with the filing deadlines governing appeal *(e.g.,* Bankruptcy Court under Fed R. Banks. P 8002) constitutes a jurisdictional defect that prevents the court from addressing the merits, etc. That said case is pertinent and relevant in interpreting whether this statutory provision [i.e., Fed. R. Bankr. 8002(a)] should be construed as *"nonjurisdictional"* but are instead *"claim-processing rule,"* that is germane to the Debtor-Appellant's Brief at 14 and Appendix A-19

District Court Held:

> "However, these issues, which pertain to the merits of the original appeal, were never addressed because this Court found that it did not have jurisdiction to hear the appeal due to the debtor's failure to file a timely appeal." (A-6)

Thus, in *Eberhard,* at 406, 126 S.Ct., the Court acknowledged that the imprecise use of the term, often "to describe emphatic time prescriptions in rules of court," has led courts to improperly use "jurisdictional" to described rules that do not encompass subject-matter jurisdiction.

The letter is appropriate, under said local rule, which is intended to provide this Circuit Court with guided authority, in interpreting whether this statutory provision [i.e., Fed. R. Bankr. P. 8002(a) - Ten-Day Period] should be construed as jurisdictional.

Respectfully submitted,

Respectfully submitted,

Leonard William Houston a/k/a
Leonard W. Houston, *pro-se*
Debtor-Appellant

CC: Amy Przewozny, Esq., *Of Counsel*
STEVEN J. BAUM, P.C.
Attorneys for Creditor-Appellee
220 Northpointe Parkway, Suite G
Amherst, New York 14228
Telephone No. (716) 204-2412

ORANGE COUNTY CLERK'S OFFICE RECORDING PAGE
THIS PAGE IS PART OF THE INSTRUMENT-
DO NOT REMOVE

TYPE IN BLACK INK:
NAME(S) OF PARTY(S) TO DOCUMENT

Aames Funding Corp d/b/a
Aames Home Loan
TO
US Bank National Assoc
As trustee
Credit Suisse First Boston

SECTION 63 BLOCK 1 LOT126
RECORD AND RETURN TO
(name and address)
Aames Funding Corporation
350 South Grand Ave
Los Angels, CA 90071
Attn: Collateral Control

THIS IS PAGE ONE OF THE RECORDING

ATTACH THIS SHEET TO THE FIRST PAGE OF EACH
RECORDED INSTRUMENT ONLY
DO NOT WRITE BELOW THIS LINE

INSTRUMENT TYPE:
DEED __ MORTGAGE __ SATISFACTION
_X_ASSIGNMENT__OTHER__

PROPERTY LOCATION
__2089 BLOOMING GROVE (TN)
__2001 WASHINGTONVILLE (VLG)
__2289 CHESTER (TN)
__2201 CHESTER (VLG)
__2489 CORNWALL (TN)
__2401 CORNWALL (VLG)
__2800 DEERPARK (TN)
__3089 GOSHEN (TN)

__3001 GOSHEN (VLG)
__3003 FLORIDA (VLG)
__3005 CHESTER (VLG)
__3200 GREENVILLE (TN)
__3489 HAMPTONBURGH(TN)
__3401 MAYBROOK (VLG)
__3689 HIGHLANDS (TN)
__ 3601 HIGHLAND FALLS(VGL)
__3889 MINISINK (TN)
__3801 UNIONVILLE(VLG)
__4089 MONROE (TN)
__4001 MONROE (VLG)
__4003 HARRIMAN (VLG)
__4005 KIRYAS JOEL(VLG)
__4289 MONTGOMERY(TN)
__4201 MAYBROOK (VLG)
__4203 MONTGOMERY(VLG)
__4205 WALDEN (VLG)
__4489 MOUNT HOPE (TN)
__4401 OTISVILLE(VLG)
__4600 NEWBURGH (TN)
__4800 NEW WINDSOR (TN)
__5089 TUXEDO (TN)
__5001 TUXEDO PARK (VLG)
__5200 WALLKILL (TN)
__5489 WARWICK (TN)
__3003 FLORIDA (VLG)
__5403 GREENWOOD LAKE (VLG)
__5405 WARWICK (VLG)
__5600 WAWAYANDA (TN)
__5889 WOODBURY (TN)
__5801 HARRIMAN (VLG)

CITIES
__0900 MIDDLETOWN
__1100 NEWBURGH
__1300 PORT JERVIS

__9999 HOLD

NO PAGES __5_CROSS REF._1_
CERT. COPY_ ADD'L X-REF.__
MAP#___ PGS.____

PAYMENT TYPE: CHECK _X_
CASH___
CHARGE___
NO FEE___

Taxable
CONSIDERATION $_______
TAX EXEMPT____

TAXABLE
MORTGAGE AMT$_______
DATE____________________

MORTGAGE TAX TYPE:
__(A) COMMERCIAL/FULL 1%
__(B) 1 OR 2 FAMILY
__(C) UNDER $10,000
__(E) EXEMPT
__(F) 3 TO 6 UNITS
__(I) NAT. PERSON/CR. UNION
__(J) NAT. PER-CR. UN/1 OR 2.
__(K) CONDO

Donna L. Benson
DONNA L. BENSON
ORANGE COUNTY CLERK

RECEIVED FROM: Prime Title

RECORDED/FILED
01/06/2006/ 16:21:19
DONNA L. BENSON
County Clerk
ORANGE COUNTY, NY

FILE # 20060002111
A/MTG / BK 12043 PG 0631
RECORDING FEES 40.50
Receipt#520155 joanned

STATE [illegible] SS
I, DONNA L. BENSON, [illegible] CLERK AND [illegible] COUNTY COURTS, ORANGE COUNTY, DO HEREBY CERTIFY THAT I HAVE COMPARED [illegible] COPY WITH THE ORIGINAL THEREOF FILED OR RECORDED IN MY OFFICE ON 1-6-06 55
AND THE SAME IS A CORRECT TRANSCRIPT THEREOF.
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL
2-22-06 Donna L. Benson
COUNTY CLERK & CLERK OF THE SUPREME COUNTY COURTS, ORANGE COUNTY

WHEN RECORDED MAIL TO:

Aames Funding Corporation
350 South Grand Avenue
Los Angeles, CA 90071
Attn: Collateral Control
1205053531

ASSIGNMENT OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS That Aames Funding Corporation DBA Aames Home Loan whose address is 350 South Grand Avenue, 42nd Floor, Los Angeles, Ca., as Mortgagee under that certain MORTGAGE executed by Leonard W. Houston, sole property whose address is 148 DEER COURT. MIDDLETOWN, NY 10940

As mortgagor on the 29th day of May 2004 and recorded on the 6th day of June 2004 in Book 11523 of at page 1961 under filing No. of the Records of ORANGE County.

State of New York, given to secure the payment of a promissory note for the sum of One Hundred Forty Four Thousand and No/100 Dollars ($144,000.00) and interest, has endorsed said note and does hereby ASSIGN AND TRANSFER to US Bank National Association, Co Trustee for Credit Suisse First Boston Heat 2004-6, all right, title and interest in said note and all rights accrued under said Mortgage and all indebtedness secured thereby. The said Mortgage described herein affects the premises commonly known and designated as:

“The rider attached hereto is a part of the assignment”
Property address 148 Deer Court, Middletown, NY
Section 63
Block 1
Lot 126
This assignment is not subject to the requirements of Section 275 of the Real Property Law because it is an assignment within the secondary mortgage market.

IN WITNESS WHEREOF said Aames Funding Corporation DBA Aames Home Loan has caused this instrument to be signed by its Assistant Secretary
and attested by its corporate seal this
4th day of June A.D. 2004

4th day of. June , A.D. 2004

y: Lisa Stratton
Lisa Stratton, Assistant Secretary

y: ____________________
Nicholas Carbonara, Assistant Secretary

Legal Description Continued

Borrowers:	LEONARD W. HOUSTON
Property Address:	148 DEER COURT MIDDLETOWN, NY 10940

The unit known as Residential Unit No. 148 (hereinafter called the "Unit") located in Deer Court, in the City of Middletown, County of Orange and State of New York (hereinafter called the "Property") and also designated and described as Residential Unit No. 148 in the declaration comprising Deer Run made by Deer Run Corp., under the Condominium Act of the State of New York (Article 9-B of the Real Property Law of the State of New York) dated the 4th day of May, 1989 and recorded in the Office of the County Clerk of the County Division of Land Records, on the 4th day of June 1989, in Liber 3145 of conveyances at Page 29 (hereinafter called the Declaration), which unit is also designated as Tax Lot No. 63-1-1.26 on the floor plans of the building, prepared and certified by Barry Poskauzer, AIA, Architect, on the 15th day of June , 1988 and filed simultaneously with said declaration in the Office of the County Clerk of Orange County, Division of Land Records as Map No. 9543.

Loan Number: 0001004225

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On June 4, 2004, before me, Kristy L. Husbands a Notary Public, in and for State of Delaware, County of New Castle, said County and State, personally appeared Lisa Stratton and Nicolas Carbonara personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Notary Public in and for said County and State.

KRISTY L. HUSBANDS
Notary Public
State of Delaware
My Commission Expires Oct. 7, 2005

PRIME TITLE SEARCH, LLC.
Title No. PT-166805(Loan No.1205053531)

SCHEDULE A
DESCRIPTION

Section 63. Block 1 and Lot 1.-26

THE Unit known as Residential Unit No. 148 (hereafter called the "Unit") located at Deer Court, in the city of Middletown, County of Orange and State of New York (hereinafter called the "Property") and also designated and described as Residential Unit No.148 in the Declaration comprising Deer Run, made by Deer Run Corp., under the Condominium Act of the State of New York (Article 9-B of the Real Property Law of the State of New York), dated the 4th day of May, 1989 and recorded in the Office of the County Clerk oft he County, Division of Land Records, on the 4hday of June 1989, in Liber 3145of Conveyances at Page 29 (hereinafter called the Declaration), which unit is also designated as Tax Lot No. 63-1-1.26 on the Floor Plans of the Building, prepared and certified by Barry Poskanzer, AIA, Architect, on the 15th day of June 1988 and filed simultaneously with said Declaration in the Office of the County Clerk of Orange County, Division of Land Records as Map No. 9543.

THE land area of the Property and the location of the building in which the aforesaid Unit is located are known on a certain map entitled, "Site Plan Deer Run" prepared by Chumard and McEvilly, Engineers and filed in the Office of the Clerk of Orange County, Division of Land Records, on the 14th day of June 1989 as Map No. 9541.

TOGETHER with an undivided .4960 percent interest in the Common Elements of the Property described in said Declaration (hereinafter called "Common Elements").

Premises known as 148 Deer Court, Middletown, New York

Aames Home Loan
350 S. Grand Avenue. 42nd Floor; Los Angeles, CA
90071 Tel. (800) 737-1192

August 16,2004

LEONARD W. HOUSTON
148 DEER COURT
MIDDLETOWN NY 10940

NOTICE OF ASSIGNMENT, SALE OR TRANSFER OF SERVICING RIGHTS

Re: Aames Loan Number: 1004225

Dear Borrower(s):

You are hereby notified that the servicing of your mortgage loan, that is the right to collect payments from you, is being assigned, sold or transferred from Aames Home Loan (Aames) to America's Servicing Company, effective August 31, 2004. The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Your new servicer must also send you this notice no later than 15 days after this effective date, or at closing. If you have any questions relating to the transfer of servicing of your loan, call the Aames Customer Service Department toll free at (800) 737-1192, between 8:30 a.m. and 530 p.m., Pacific Time, Monday through Friday.

Your new servicer will be America's Servicing Company. The correspondence address for your new servicer is: Attn: Customer Service X3902 -01H; 7495 New Horizon Way, Frederick, MD 21703. The payment address for your new servicer is: P.O. Box 37297, Baltimore, MD 21297-3297. If you have any questions relating to the transfer of servicing to your new servicer, call the Customer Service Department toll free at (866) 430-0675, Monday through Friday, 9:00 a.m. to 6:00 p.m., (EST).

The last date that Aames will accept payments from you is August 31, 2004. The date your new servicer will start accepting payments from you is September 01,-2C104. **Send all payments due on or after that date to your new servicer.** The due date of your next payment will remain the same. If you have not yet received a statement from America's Servicing Company prior to making your next payment, please reference your Aames loan number on your check. If your payment was automatically withdrawn from your bank account, this service will be discontinued effective on August 31, 2004.

At year-end, Aames will send you a statement for the time your loan was serviced at Aames. This is for use in income tax reporting. America's Servicing Company will send you a statement for the remainder of the year.

This notification is in accordance with Section 6 of the Real Estate Settlement Procedures Act (RESPA). You should be aware of the following information, which is set out in more detail in Section 6 of RESPA

(12 U.S.C. 2605).

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed upon you.

Section 6 of RESPA (12 U.S.C. 2605) gives certain consumer rights. If you send a "qualified written request" to your servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 business days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and the reason for the request.

Not later than 60 business-days after receiving your request, your servicer must make appropriate corrections to your account and must provide you with a written clarification regarding any dispute. During this 60 business day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or "qualified written request". However, this does not prevent the servicer from initiating foreclosure if proper grounds exist under the mortgage documents. A business day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

Sincerely,

Aames Home Loan
Customer Service Department

ASC
America's Servicing Company
7495 New Horizon Way
Frederick, MD 21703
(866) 430-0675

September 15, 2004

RE: New Loan Number: 1205053531
Old Loan Number: 1004225

Leonard W. Houston
148 Deer Court
Middletown NY 10940-6867

Dear Valued Customer:

This letter is being sent to inform you that the servicing of your loan **will transfer** to America's Servicing Company effective September 1, 2004. The transfer of mortgage servicing is a common practice in today's-market and does not affect any terms or conditions of your mortgage, other than those provisions related to the servicing of your mortgage. Please refer to the Notice of Assignment for the Real Estate Settlement Procedures Act (RESPA) printed on the reverse side of this letter for more information. America's Servicing Company is committed to providing the quality service you are accustomed to and to ensuring a smooth transition.

Beginning September 1, 2004, please direct payments to America's Servicing Company. America's Servicing Company will send you a billing statement each month after your payment is received. If you wish to make a payment greater than the amount due, please indicate how you wish to have the additional funds applied.

All payments and correspondence regarding your loan should be addressed as indicated below:

PAYMENT:
America's Servicing Company
P.O. Box 37297
Baltimore, MD 21297-3297

CORRESPONDENCE:
America's Servicing Company
7495 New Horizon Way X3902-01H
Frederick, MD 21703

Please include your old loan number, or America's Servicing Company loan number on all inquiries to assure prompt response to your needs during this period. When you send in a check to make your payment, America's Servicing Company may clear the check electronically. Receipt of your check at the address listed on your payment coupon will authorize us to process your payment as an electronic debit to the checking account on which the check was written. If your mortgage check does not clear and is returned, we may withdraw funds from your account electronically. Normally, if this occurs your check will not be returned to you with your bank statement but you can obtain a copy by other means.

If your mortgage payments were drafted from an account this service was discontinued. This may be a good time to consider the convenience of our Automatic Mortgage Payment (AMP106) program and begin deducting your mortgage payment from your checking or savings account. If interested, please call America's Servicing Company Customer Service at 866-430-0675 and reference AMP106 to enroll over the phone. You may also return the enclosed application to the correspondence address referenced above.

If you currently have credit life or other optional insurance, it will not transfer to America's Servicing Company.

No later than January 31st of next year, America's Servicing Company will provide you with a statement reflecting the amount of mortgage interest paid by you to America's Servicing Company.

The goal of America's Servicing Company is to continue to meet your expectations of service. If you have any questions regarding this transfer please call America's Servicing Company Customer Service toll free at 866-430-0675, Monday through Friday 9:00 a.m. to 6:00 p.m. Eastern Standard Time. If you have any questions relating to your loan activity prior to the transfer of servicing, please call your previous servicer below:

Previous Servicer: Aames Home Loan
Toll Free Phone Number: 1-800-737-1192
Hours of Operation: 8:30 a.m. to 5:30 p.m. PST,

Monday through Friday

Sincerely,

Sandra K. Bondarenko

Sandra K. Bondarenko
Assistant Vice President
America's Servicing Company

NOTICE OF ASSIGNMENT, SALE OR TRANSFER OF SERVICING RIGHTS

Except in limited circumstances, section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C Section 2605) requires that your present servicer send you notice of the assignment, sale, or transfer of the servicing rights to your mortgage loan (i.e., the right to collect payments from you) at least 15 days before the effective date of transfer or at closing. Your new servicer must also send you this notice no later than 15 days after the effective date or at closing.

You should also be aware of the following information, which is set out in more detail in Section 6 of RESPA (12 U.S.C. 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late and a late fee may not be imposed on you.

Section 6 of RESPA (12 U.S.C. 2605) gives you certain consumer rights. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request.

Not later than 60 Business Days after receiving pour request: your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During this 60 Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such a period or qualified written request. However, this does not prevent the servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A Business Day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

Return To:
TransUnion Settlement Solutions, Inc.
Attn: Recording Department
5300 Brandywine Parkway
Suite 100
Wilmington, DE 19803

Prepared By: Tina Gueyikian
3731 Wilshire Blvd.
3rd Floor
Los Angeles, CA 90010

MORTGAGE

WORDS USED OFTEN IN THIS DOCUMENT

(A)"Security Instrument" This document, which is dated May 29, 2004 together with all Riders to this document, will be called the "Security Instrument."

(B) "Borrower." Leonard W . Houston, sole property

Whose address is 148 DEER COURT,
MIDDLETOWN, NY 10940

sometimes will be called "Borrower" and some times simply "I" or "me".

(C) 'Lender." Aames Funding Corporation DBA Aames Home Loan will be called "Lender." Lender is a corporation or association which exists under the laws of The State of California . Lender's address is 350 South Grand Avenue, 42nd Floor, Los Angeles, CA 90071.

This property is or will be principally improved by a one- or two -family house or dwelling only.

(D) "Note." The note signed by Borrower and dated May 29, 2004, will be called the "Note." The Note shows that I owe Lender One Hundred Forty Four Thousand and No/100 Dollars (U.S. $144,000.00) plus interest and other amounts that may be payable. I have promised to pay this debt in Periodic Payments and to pay the debt in full by July 1, 2034

(E) "Property." The property that is described below in the section titled "Description of the Property," will be called the "Property."

(F) "Loan" The "Loan" means the debt evidenced by the Note, plus interest, any prepayment charge and late charges due under the Note, and all sums due under this Security Instrument, plus interest,

(G) *"Sums Secured."* The amounts described below in the section titled "Borrower's Transfer to Lender of Rights in the Property" sometimes will be called the "Sums Secured."

(H) "Rider." All Riders attached to this Security Instrument that are signed by Borrower will be called "Riders." The following Riders are to be signed by Borrower [check box as applicable]:
_X_Adjustable Rate Rider
_X_ Condominium Rider
__ Second Home Rider
___Balloon Rider

___ Planned Unit Development Rider
___ 1-4 Family Rider
___ VA Rider
___ Biweekly Payment Rider other(s) [specify]

(I) "Applicable Law." All controlling applicable federal state and local statutes, regulations, ordinances and administrative rules and *orders* (that have the effect of law) as well as all applicable final, non-appealable, judicial opinions will be called "Applicable Law."

(J) "Community Association Dues, Fees, and Assessments." All dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization will be called "Community Association Dues, Fees, and Assessments."

(K) "Electronic Funds Transfer." "Electronic Funds Transfer" means any transfer of money, other than by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a final institution to debit or credit an account. Same common examples of an Electronic Funds Transfer are point-of-sale transfers (where a card such as an asset or debit card is used at a merchant), automated teller machine (or ATM) transactions, transfers initiated by telephone, wire transfers, and automated clearing house transfers.

(L) "Escrow Items." Those items that are described in Section 3 will be called "Escrow Items."

(M) "Miscellaneous Proceeds." "Miscellaneous Proceeds" means any compensation, settlement, award of *damages,* or proceeds paid by any third party (other than Insurance Proceeds, as defined in, and paid under the coverage described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) Condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of Condemnation or sale to avoid Condemnation; or (v) misrepresentations of or omissions as to, the value and/or condition of the Property. A taking of the Property by any government authority by eminent domain is known as "Condemnation."

(N) "Mortgage Insurance." "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment." The regularly scheduled amount due for (i) principal and interest under the Note, and (ii) any amounts under Section 3 will be called "Periodic Payment."

(P) "RESPA." "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the loan does not qualify as a "federally related mortgage loan" under RESPA.

BORROWER'S TRANSFER TO LENDER OF RIGHTS IN THE PROPERTY

I mortgage, grant and convey the Property to Lender subject to the terms of this Security Instrument. This means that, by signing this Security Instrument, I am giving Lender those rights that are stated in this Security Instrument and also those rights that Applicable Law fives to lenders who hold mortgages on real property. I am giving Lender these rights to protect Lender from possible losses that might result if I fail to:

(A) Pay all the amounts that I owe Lender as stated in the Note including, but not limited to, all renewals extensions and modifications of the Note;

(B) Pay, with interest, any amounts that Lender spends under this Security Instrument to protect the value of the Property and Lender's rights in the Property; and

(C) Keep all of my other promises and agreements under this Security Instrument and the Note.

DESCRIPTION OF THE PROPERTY

I give Lender rights in the Property described in (A) through (G) below:

(A) The Property which is located at 148 Deer Court, Middletown, New York 10940. This property is in Orange County. It has the following legal description:

The unit known as Residential Unit No. 148 (hereinafter called the "Unit") located in Deer Court, in the City of Middletown, County of Orange and State of New York (hereinafter called the "Property") and also designated and described as Residential Unit No. 148 in the declaration comprising Deer Run made by Deer Run Corp., under the Condominium Act of the State of New York (Article 9-B of the Real Property Law of the State of New York) dated the 4th day of May, 1989 and recorded in the Office of the County Clerk of the County Division of Land Records, on the 4th day of June 1989, in Liber 3145 of conveyances at Page 29 (hereinafter called the Declaration), which unit is also designated as Tax Lot No. 63-1-1.26 on the floor plans of the building, prepared and certified by Barry Proskauzer, AIA, Architect, on the 15th day of June, 1988 and filed simultaneously with said declaration in the Office of the County Clerk of Orange County, Division of Land Records as Map No. 9543.

(B) All buildings and other improvements that are located on the Property described in subsection (A) of this section;

(C) All rights in other property that I have as owner of the Property described in subsection (A) of this section. These rights are known as "easements and appurtenances attached to the Property;"

(D) All rights that I have in the land which lies in the streets or roads in front of, or next to, the Property described in subsection (A) of this section;

(E) All fixtures that are now or in the future will be on the Property described in subsections (A) and (B) of this section;

(F) All of the rights and property described in subsections (B) through (E) of this section that I acquire in the future; and

(G) All replacements of or additions to the Property described in subsections (B) through (F) of this section and all Insurance Proceeds for loss or damage to, and all Miscellaneous Proceeds of the Property described in subsections (A) through (F) of this section.

BORROWER'S RIGHT TO MORTGAGE THE PROPERTY AND BORROWER'S OBLIGATION TO DEFEND OWNERSHIP OF THE PROPERTY

I promise that: (A) I lawfully own the Property; (B) I have the right to mortgage, grand and covey the Property to Lender; and (C) there are no outstanding claims or charges against the Property, except for those which are of public record.

I give a general warranty of title to Lender. This means that I will be fully responsible for any losses which Lender suffers because someone other than myself has some of the rights in the Property which I promise that I have. I promise that I will defend my ownership of the Property against any claims of such rights.

PLAIN LANGUAGE SECURITY INSTRUMENT

This Security Instrument contains promises and agreements that are used in real property security instruments all over the country. My promises and agreements are stated in "plain language."

COVENANTS

I promise and agree with Lender as follows:

1. Borrower's Promise to Pay. I will pay to Lender on time principal and interest due under the Note and any prepayment, late charges and other amounts due under the Note. I will also pay all amounts for Escrow Items under Section 3 of this Security Instrument.

Payments due under the Note and this Security Instrument shall be made in U.S. currency. If any of my payments by check or other payment instrument is returned to Lender unpaid. Lender may require my payment be made by: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location required in the Note, or at another location designated by Lender under

Section 15 of this Security Instrument. Lender may return or accept any payment or partial payment, if it is for an amount that is less than the amount that is then due. If Lender accepts a lesser payment, Lender may refuse to accept a lesser payment that I may make in the future and does not waive any of its rights. Lender is not obligated to apply such lesser payments when it accepts such payments. If interest on principal accrues as if all Periodic Payments had been paid when due, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until I make payments to bring the Loan current. If I do not do so within a reasonable period of time, Lender will either apply such funds or return them to me. In the event of foreclosure, any unapplied funds will be applied to the outstanding principal balance immediately prior to foreclosure. No offset or claim which I might have now or in the future against Lender will relieve me from making payments due under the Note and this Security Instrument or keeping all of my other promises and agreements secured by this Security Instrument.

2. Application of Borrower's Payments and Insurance Proceeds. Unless Applicable Law or this Section 2 requires otherwise, Lender will apply each of my payments that Lender accepts in the following order:

First, to pay interest due under the Note;
Next, to pay principal due under the Note; and
Next, to pay the amounts due Lender under Section 3 of this Security Instrument.

Such payments will be applied to each Periodic Payment in the order in which it became due.

Any remaining amounts will be applied as follows:
First, to pay any late *charges;*
Next, to pay any other amounts due under this Security Instrument; and Next, to reduce the principal balance of the Note.

If Lender received a payment from me for a late Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the late Periodic Payment and the late charge. If more of the Periodic Payments that are due if, and to the extent that, each payment can be paid in full; Next, to the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due.

Voluntary prepayments will be applied as follows: First, to any prepayment charges; and Next, as described in the Note.

Any application of payments, Insurance Proceeds, or Miscellaneous Proceeds to principal due under the Note will not extend or postpone the due date of the Periodic Payments or change the amount of those payments.

3. Monthly Payments For Taxes and Insurance.

(a) Borrower's Obligations.

I will pay to Lender all amounts necessary to pay for taxes, assessments, water charges, sewer rents and other similar charges, ground leasehold payments or rents (if any), hazard or property insurance covering the Property, flood insurance (if any), and any required Mortgage Insurance, or a Loss Reserve as described in Section 10 in the place of Mortgage Insurance. Each Periodic Payment will include an amount to be applied toward payment of the following items which are called "Escrow Items:"

(1) The taxes, assessments, water charges, sewer rents and other similar charges, on the Property which under Applicable Law may be superior to this Security Instrument as a Lien on the Property. Any claim, demand or charge that is made against property because an obligation has not been fulfilled is known as a "Lien;"
(2) The leasehold payments or ground rents on the Property (if any);
(3) The premium for any and all insurance required by Lender under Section 5 of this Security Instrument;
(4) The premium for Mortgage Insurance (if any);
(5) The amount I may be required to pay Lender under Section 10 of this Security Instrument instead of the payment of the premium for Mortgage Insurance (if any); and
(6) If required by Lender, the amount for any Community Association Dues, Fees and Assessments.

After signing the Note, or at any time during its term, Lender may include these amounts as Escrow Items. The monthly payment I will make for

Escrow Items will be based on Lender's estimate of the annual amount required.

I will pay all of these amounts to Lender unless Lender tells me, in writing, that I do not have to do so, or unless Applicable Law requires otherwise. I will make these payments on the same day that my Periodic Payments of principal are due under the Note.

The amounts that I pay to Lender for Escrow Items under this Section 3 will be called "Escrow Funds." I will pay Lender the Escrow Funds for Escrow Items unless Lender waives my obligation to pay the Escrow Funds for any or all Escrow Items. Lender may waive my obligation to pay to Lender Escrow Funds for an or all Escrow Items at any time. Any such waiver must be in writing. In the event of such waiver, I will pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Escrow Funds has been waived by Lender, and, if Lender requires, will promptly send to Lender receipts showing such payment within such time period as Lender may require. My obligation to make such payments and to provide receipts will be considered to be a promise and agreement contained in the Security Instrument, as the phrase "promise and agreements" is used in Section 9 of this Security Instrument. If I am obligated to pay Escrow Items directly, pursuant to a waiver, and I fail to pay the amount due for an Escrow Item, Lender may pay that amount and I will then be obligated under Section 9 of this Security Instrument to repay to Lender. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with

Section 15 of this Security Instrument and, upon the revocation, I will pay to Lender all Escrow Funds, and in amounts, that are then required under this Section 3.

I promise to promptly send to Lender any notices that I receive of Escrow Item amounts to be paid. Lender will estimate from time to time the amount of Escrow Funds I will have to pay by using existing assessments and bills and reasonable estimates of the amount I will have to pay for Escrow Items in the future, unless Applicable Law requires Lender to use another method for determining the amount I am to pay.

Lender may, at any time, collect and hold Escrow Funds in the amount sufficient to permit Lender to apply the Escrow Funds at the time specified under RESPA. Applicable Law puts limits on the total amount of Escrow Funds Lender can at any time collect and hold. This total amount cannot be more that the maximum amount a lender could require under RESPA. If there is another Applicable Law that imposes a lower limit on the total amount of Escrow Funds Lender can collect and hold, Lender will be limited to the lower amount.

Lender may, at any time, collect and hold Escrow Funds in an amount sufficient to permit Lender to apply the Escrow Funds at the time specified under RESPA. Applicable Law puts limits on the total amount of Escrow Funds Lender can at any time collect and hold. This total amount cannot be more than the maximum amount a lender could require under RESPA. If there is another Applicable Law that imposes a lower limit on the total amount of Escrow Funds Lender can collect and hold, Lender will be limited to the lower amount.

(b) Lender's Obligations.

Lender will keep the Escrow Funds in a savings or banking institution which has its deposits insured by a federal agency, instrumentality, or entity, or in any Federal Home Loan Bank. If Lender is such a savings or banking institution, Lender may hold the Escrow Funds. Lender will use *the* Escrow Funds to pay the Escrow Items no later than the time allowed under RESPA or other Applicable Law. Lender will give to me, without charge, an annual accounting of the Escrow Funds. That accounting will show all additions to and deductions from the Escrow Funds and the reason *for* each deduction.

Lender may not charge me for holding or keeping the Escrow Funds, for using the Escrow Funds to pay Escrow Items, for making a yearly analysis *of* my payment of Escrow Funds or for receiving, or for verifying and totaling assessments and bills. However, Lender may charge me for these services if Lender pays me interest on the Escrow Funds and if Applicable Law permits Lender to make such a charge. Lender will not be required to pay me any interest or earnings on the Escrow Funds unless either (1) Lender and I agree in writing that Lender will pay interest on the Escrow Funds, or (2) Applicable Law requires Lender to pay interest on the Escrow Funds.

(c) Adjustments to the Escrow Funds.

Under Applicable Law, there is a limit on the amount of Escrow Funds Lender may hold. If the amount of Escrow Funds held by Lender exceeds this limit, then there will be an excess amount and

RESPA requires Leader to account to me in a special manner for the exam amount of Escrow Funds.

If, at any time, Lender has not received enough Escrow Funds to make the payments of Escrow Items when the payments are due, Lender may tell me in writing that an additional amount is necessary. I will pay to Lender whatever additional amount is necessary to pay the Escrow Items when the payments are due, but the number of payments will not be more than12.

When I have paid all of the Sums Secured, Lender will promptly refund to me any Escrow Funds that are then being held by Lender.

4. Borrower's Obligation to Pay Charges, Assessments and Claims. I will pay all taxes, assessments, water charges, sewer rents and other similar charges, and other charges and fines that may be imposed on the Property and that may be superior to this Security Instrument. I will also make ground rents or payments due under my lease if I am a tenant on the Property and Community Association Dues, Fees, and Assessments (if any) due on the Property. If these items are Escrow Items, I will do this by making the payments as described in Section 3 of this Security Instrument. In this Security Instrument, the word "Person" means any individual, organization, governmental authority or other party.

I will promptly pay or satisfy all Liens against the Property that may be superior to this Security Instrument, However, this Security Instrument does not require me to satisfy a superior Lien if: (a) I agree, in writing, to pay the obligation which gave rise to the superior Lien and Lender approves the way in which I agree to pay that obligation, but only so long as I am performing such agreement; (b) in good faith, I argue or defend against the superior Lien in a lawsuit so that in Lender's opinion, during the lawsuit, the superior Lien may not be enforced, but only until the lawsuit ends; or (c) I secure from the holder of that other Lien an agreement, approved in writing by Lender, that the Lien of this Security Instrument is superior to the Lien held by that Person. If Lender determines that any part of the Property is subject to a superior Lien, Lender may give Borrower a notice identifying the superior Within 10 days of the date on which the notice is given, Borrower shall pay or satisfy the superior Lien, Lender or take one or more of the actions mentioned in this Section 4.

Lender also may require me to pay a onetime charge for an independent real estate tax reporting service used by Lender in connection with the Loan, unless Applicable Law does not permit Lender to make such a charge.

5. Borrower's Obligation to Maintain Hazard Insurance or Property Insurance. I will obtain hazard or property insurance to cover all buildings and other improvements that now are or in the future will be, located on the Property. The insurance will cover loss or damage caused by fire, hazards normally covered by "Extended Coverage" hazard insurance policies, and any other hazards for which Lender requires coverage, including, but not limited to earthquakes and floods. The insurance will be in the amounts (including, but not limited to, deductible levels) and for the periods of time required by Lender. What Lender requires under the last sentence can change during the term of the Loan. I may choose the insurance company, but my choice is subject to Lender's right to disapprove. Lender may not disapprove my choice unless the disapproval is reasonable. Lender may require me to pay either (a) a onetime charge for flood zone determination, certification and tracking services, or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect the flood zone determination or certification. If I disagree with the flood zone determination, I may request the Federal Emergency Management Agency to review the flood zone determination and I promise to pay any fees charged by the Federal Emergency Management Agency for its review.

If I fail to maintain any of the insurance coverages described above, Lender may obtain insurance coverage, at Lender's option and my expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage will cover Lender, but might or might not protect me, my equity in the Property, or the contents of the Property, against any risk hazard or liability and might provide greater or lesser coverage than was previously in effect. I acknowledge that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that I could have obtained. Any amounts disbursed by Lender under this Section 5 will become my additional debt secured by this

Security Instrument. These amounts will bear interest at the interest rate set forth in the Note from the date of disbursement and will be payable with such interest, upon notice from Lender to me requesting payment.

All of the insurance policies and renewals of those policies will include what is known as a "Standard Mortgage Clause" to protect Lender and will name Lender as mortgagee and/or as an additional loss payee. The form of all policies and renewals will be acceptable to Lender. Lender will have the right to hold the policies and renewal certificates. If Lender requires, I will promptly give Lender all receipts of paid premiums and renewal notice that I receive.

If I obtain any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy will include a Standard Mortgage Clause and will name Lender as mortgagee and/or as an additional loss payee.

If there is a loss or damage to the Property, I will promptly notify the insurance company and Lender. If I do not promptly prove to insurance company that the loss or damage occurred, then Lender may do so.

The amount paid by the insurance company for loss or damage to the Property is called "Insurance Proceeds." Unless Lender and I otherwise agree in writing, any Insurance Proceeds, whether or not the underlying insurance was required by Lender, will be used to repair or to restore the damaged Property unless: (a) it is not economically feasible to make the repairs or restoration; (b) the use of the Insurance Proceeds for that purpose would lessen the protection given to Lender by this Security Instrument; or (c) Lender and I have agreed in writing not to use the Insurance Proceeds for that purpose. During the period that any repairs or restorations are being made, Lender may hold any Insurance Proceeds until it has had an opportunity to inspect the Property to verify that the repair work has been completed to Lender's satisfaction. However, this inspection will be done promptly. Lender may make payments for the repairs and restorations in a single payment or in a series of progress payments as the work is completed. Unless Lender and I agree otherwise in writing or unless Applicable Law requires otherwise, Lender is not required to pay me any interest or earnings on the Insurance Proceeds. I will pay for any public adjusters or other third parties that I hire, and their fees will not be paid out of the Insurance Proceeds. If the repair or restoration is not economically feasible or if it would lessen Lender's protection under this Security Instrument then the Insurance Proceeds will be used to reduce the amount that I owe to Lender under this Security Instrument. Such Insurance Proceeds will be applied in the order provided for in Section 2. If any of the Insurance Proceeds remain after the amount that I owe to Lender has been paid in fall, the remaining Insurance Proceeds will be paid to me.

If I abandon the Property, lender may file, negotiate and settle any available insurance claim and related matters. If I do not answer, within 30 days, a notice from Lender stating that the insurance company has offered to settle a claim, Lender may negotiate and settle the claim. The 30 day period will begin when the notice is gives. In either event, *or* if Lender acquires the Pròperty under Section 22 of this Security Instrument or otherwise, I give Lender my rights to any Insurance Proceeds in an amount not greater than the amounts unpaid under the Note and this Security Instrument. I also give Lender any other of my rights (other than the right to any refund of unearned premiums that I paid) under all insurance policies *covering* the Property, if the rights *are* applicable to the coverage of the Property. Lender may use the Insurance Proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Borrower's Obligations to Occupy The Property. I will occupy the Property and use the Property as my principal residence within *60* days after I sign this Security Instrument. I will continue to occupy the Property and to use the Property as my principal residence for *at* least one year. The one-year period will begin when I first occupy the Property. However, I will not have to occupy the Property and use the Property as my principal residence within the time frames set forth above if Lender agrees in writing that I do not have to do so. Lender may not refuse to agree unless the refusal is reasonable. I also will not have to occupy the Property and use the Property as my principal residence within the time frames set forth above if extenuating circumstances exist which are beyond my control.

7. Borrower's Obligations to Maintain And Protect The Property And to Fulfill Any Lease Obligations.

(a) Maintenance and Protection of the Property.

I will not destroy, damage m harm the Property, and I will not allow the Property to deteriorate. Whether or m I am residing in *the* Property, I will keep the Property in good repair so that it will not deteriorate or decrease in value due to its condition. Unless it is determined d r Section 5 of this Security Instrument that repair is not economically feasible, I will promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or Condemnation (as defined in the definition of Miscellaneous Proceeds) proceeds are paid because of loss or damage to, or Condemnation of, the Property, I will repair or restore the Property only if Lender bas released those proceeds for such purposes. Lender may pay for the repairs and restoration out of proceeds in a single payment or in a series of progress payments as the work is completed. If the insurance or Condemnation proceeds are not sufficient to repair or restore the Property, I promise to pay for the completion of such repair or restoration.

(b) Lender's Inspection of Property.

Lender, and others authorized by Lender, may enter on and inspect the Property. They will do so in a reasonable manner and at reasonable times. If it has a reasonable purpose, Lender may inspect the inside of the home or other improvements on the

Property. Before or at the time an inspection is made, Leader will give me notice stating a reasonable purpose for such interior inspection.

8. Borrower's Loan Application. If, during the application process for the Loan, I, or any Person or entity acting at my direction or with my knowledge or consent, made false, misleading, or inaccurate statements to Lender about information important to Lender in determining my eligibility for the Loan (or did not provide Lender with such information), Lender will treat my actions as a default under this Security Instrument. False, misleading, or inaccurate statements about information important to Lender would include a misrepresentation of my intention to occupy the Property as a principal residence. This is just one example of a false, misleading, or inaccurate statement of important information.

9. Lender's Right to Protect Its Rights in The Property. *If:* (a) I do not keep my promises and agreements made in this Security Instrument; (b) someone, including me, begins a legal proceeding that may significantly affect Lender's interest in the Property or rights under this Security Instrument (such as a legal proceeding in bankruptcy, in probate, for Condemnation or Forfeiture (as defined Section 11), proceedings which could give a Person rights which could equal or exceed Lender's interest in the Property or under this Security Instrument, proceedings for enforcement of a Lien which may become superior to this Security Instrument, or to enforce laws or regulations); or (c) I have abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and Lender's rights under this Security Instrument.

Lender's actions may include, but are not limited to: (a) protecting and/or assessing the value of the Property; (b) securing and/or repairing the Property, (c) paying sums to eliminate any Lien against the Property that may be equal or superior to this Security Instrument; (d) appearing in court.; and (e) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Lender can also enter the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, have utilities turned on or off, and take any other action to secure the Property. Although Lender may take action under this Section 9, Lender does not have to do so and is under m duty to do so. I agree that Lender will not be liable for not taking any or all actions under this Section 9.

I will pay to Lender any amounts, with interest, which Lender spends under this Section 9; 1will pay those amounts to Lender when Lender sends me a notice requesting that I do so. I will pay interest on those amounts at the interest rate set forth in the Note. Interest on each amount will begin on the date that the amount is spent by Lender. This Security Instrument will protect Lender in case I do not keep this promise to pay he amounts with interest.

If I do not own, but am a tenant on the Property, I will fulfill all my obligations under my lease. I also agree that, if I acquire the full title (sometimes called "Fee Title"') to the Property, my lease interest and the Fee Title will not merge unless Lender ages to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, I will pay the premiums for the Mortgage Insurance. If, for any reason, the Mortgage Insurance coverage ceases to be available from the mortgage insurer that previously provided such insurance and Lender required me to make separate payments toward the premium for Mortgage Insurance, I will pay the premiums for substantially equivalent Mortgage Insurance coverage from an alternate mortgage insurer. However, the cost of this Mortgage Insurance coverage will be substantially equivalent to the cost to me of the previous Mortgage Insurance coverage, and the alternate mortgage insurer will be selected by Lender.

If substantially equivalent Mortgage Insurance coverage is not available, Lender will establish a non-refundable "Loss Reserve" as a substitute for the Mortgage Insurance coverage. I will continue to pay to Lender each month an amount equal to one-twelfth of the yearly Mortgage Insurance premium (as of the time the coverage lapsed or ceased to be in effect). Lender will retain these payments, and will use these payments to pay for losses that the Mortgage Insurance would have covered. The Loss Reserve is non-refundable even if the Loan is ultimately paid in full and Lender is not required to pay me any interest on the Loss Reserve. Lender can no longer require Loss Reserve payments if: (a) Mortgage Insurance coverage again becomes available through an insurer selected by Lender: (b) such Mortgage Insurance is obtained, (c) Lender requires separately designated payments toward the premiums for Mortgage Insurance; and {d) the Mortgage Insurance coverage is in the amount and for the period of time required by Lender.

If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separate payments toward the premiums for Mortgage Insurance, I will pay Mortgage Insurance premiums, or the Loss Reserve payments, and/or the requirement for Mortgage Insurance ends according to any written agreement between Lender and me providing for such termination or until termination of Mortgage Insurance is required by Applicable Law. Lender may require me to pay the premiums, or the Loss Reserve payments, in the manner described in Section 3 of this Security Instrument, Nothing in this Section 10 will affect my obligation to pay interest at the rate provided in the Note.

A Mortgage Insurance policy pays Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed Borrower is not a party to the Mortgage Insurance policy.

Mortgage insurers assess their total risk on all Mortgage Insurance from time to time. Mortgage insurers may enter into agreements with other parties to share or change their risk, or to reduce losses. These agreements are based on terms and condition that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include Mortgage Insurance premiums).

As a result of these agreements, Lender, any owner of the Note, another insurer, any reinsurer, or any other entity may receive (directly or indirectly) amounts that come from a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or changing the mortgage insurer's risk, or reducing losses. If these agreements provide that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." It also should be understood that (a) any of these agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. These agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will entitle Borrower to any refund, and (b) any of these agreements will not affect the rights Borrower has -if any -regarding the Mortgage Insurance under the Homeowners Protection Act of 1938 or any other law. These rights may include the right (a) to receive certain disclosures, (b) to request and obtain cancellation of the Mortgage Insurance, (c) to have the Mortgage Insurance terminated automatically, and/or (d) to receive a refund of any Mortgage I Insurance premiums that were not earned at the time of such cancellation or termination.

11. Agreements About Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are assigned to and will be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds will be applied to restoration or repair of the Property, if (a) the restoration or repair is economically feasible, and (b) Lender's security given in this Security Instrument is not lessened. During such repair and restoration period, Lender will have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect the Property to verify that the work has been completed to Lender's satisfaction. However, the inspection will be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless Lender and I agree otherwise in writing or unless Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender will not be required to pay Borrower any interest or earnings on the Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security given in this Security Instrument would be lessened, the Miscellaneous Proceeds will be applied to the Sums Secured, whether or not then due. The excess, if any, will be paid to me. Such Miscellaneous Proceeds will be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds will be applied to the Sums Secured, whether or not then due. The excess, if any, will be paid to me.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the Sums Secured immediately before the partial taking, destruction, or loss in value, the Sums Secured will be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction (a) the total amount of the Sums Secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to me.

In the event of a partial taking, destruction, or loss in value of the Prom in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the Sums Secured immediately before the partial taking, destruction, or loss in value, the Miscellaneous Proceeds will be applied to the Sums Secured whether or not the sums are then due.

If I abandon the Property, or if, after Lender sends me notice that the Opposing Party (as defined in the next sentence) offered to make an award to settle a claim for damages, I fail to respond to Lender within 30 days after the date Lender gives notice, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the Sums Secured, whether or not then due. "Opposing Party" means the third party that owes me Miscellaneous Proceeds or the party against whom I have a right of action in regard to Miscellaneous Proceeds.

I will be in default under this Security

Instrument if any civil or criminal action or proceeding that Lender determines could result in a court ruling (a) that would require Forfeiture of the Property, or (b) that could damage Lender's interest in the Property or rights under this Security Instrument. "Forfeiture" is a court action to require the Property, or any part of the Property, to be given up. I may correct the default by obtaining a court ruling that dismisses the court action, if Lender determines that this court ruling prevents Forfeiture of the Property and also prevents any damage to Lender's interest in the Property or rights under this Security Instrument. If I correct the default, I will have the right to have enforcement of this Security Instrument discontinued, as provided in Section 19 of this Security Instrument, even if Leader has required Immediate Payment in Full (as defined in Section 22). The proceeds of any award or claim for damages that are attributable to the damage or reduction of Lender's interest in the Property are assigned, and will be paid, to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property will be applied in the order provided for in Section 2.

12. Continuation of Borrower's Obligations And of Lender's Rights.

(a) Borrower's. Obligations.

Lender may allow me, or a Person who takes over my rights and obligations, to delay or to change the amount of the Periodic Payments. Even if Lender does this, however, I will still be fully obligated under the Note and under this Security Instrument unless Lender agrees to release me, in writing, from my obligations.

Lender may allow those delays or changes for me or a Person who takes over my rights and obligations, even if Lender is requested not to do so. Even if Lender is requested to do so, Lender will not be required to (1) bring a lawsuit against me or such a Person for not fulfilling obligations under the Note or under this Security Instrument, or (2) refuse to extend time for payment or otherwise modify amortization of the Sums Secured.

(b) Lender's Rights.

Even if Lender does not exercise or enforce any right of Lender under this Security Instrument or under Applicable Law, Lender will still have all of those rights and may exercise and enforce them in the future. Even if: (1) Lender obtains insurance, pays taxes, or pays other claims, charges or Liens against the Property; (2) Lender accepts payments from third Persons; or (3) Lender accepts payments in amounts less than the amount then due, Lender will have the right under Section 22 below to demand that I make Immediate Payment in Pull of any amounts remaining due and payable to Lender under the Note and under this Security Instrument.

13. Obligations of Borrower And of Persons Taking Over Borrower's Rights or Obligations. If more than one Person signs this Security Instrument as Borrower, each of us is fully obligated to keep all of borrower's promises and obligations contained in this Security Instrument. Lender may enforce Lender's rights under this

Security Instrument against each of us individually or against all of us together. This means that any one of us may be required to pay all of the Sums Secured. However, if one of us does not sign the Note: (a) that Person is signing this Security Instrument only to give that Person's rights in the Property to Lender under the terms of this Security Instrument; (b) that Person is not personally obligated to pay the Sums Secured; and (c) that Person agrees that Lender may agree with the other Borrowers to delay enforcing any of Lender's rights, to modify, or make any accommodations with regard to the terms of this Security Instrument or the Note without that Person's consent.

Subject to the provisions of Section 18 of this Security Instrument, any Person who takes over my rights or obligations under this Security Instrument in writing, and is approved by Lender in writing, will have all of my rights and will be obligated to keep all of my promises and agreements made in this Security Instrument. Borrower will not be released from Borrower's obligations and liabilities under this Security Instrument unless Lender agrees to such release in writing. Any Person who takes over Lender's rights or obligations under this Security Instrument will have all of Lender's rights and will be obligated to keep all of Lender's promises and agreements made in this Security Instrument except as provided under Section 20.

14. Loan Charges. Lender may charge me fees for services performed in connection with my default, for the purpose of protecting Lender's interest in the Property and rights under this

Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. With regard to other fees, the fact that this Security Instrument does not expressly indicate that Lender may charge a certain fee does not mean that Lender cannot charge that fee. Lender may not charge fees that are prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to Applicable Law which sets maximum loan charges, and that Applicable Law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed permitted limits: (a) any such loan charge will be reduced by the amount necessary to reduce the charge to the permitted hit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (even if a prepayment charge is provided for under the Note). If I accept such a refund that is paid directly to me, I will waive any right to bring a lawsuit against Lender because of the overcharge.

15. Notices Required under this Security Instrument. All notices given by me or Lender in connection with this Security Instrument will be in writing. Any notice to me in connection with this Security Instrument is considered given to me when mailed by first class mail or when actually delivered to my notice address if sent by other means. Notice to any one Borrower will be notice to all borrowers unless applicable Law expressly requires otherwise. The notice address is the address of the Property unless I give notice to Lender of a different address. I will promptly notify Lender of my change of address. If Lender specifies a procedure for reporting my change of address, then I will only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender will be given by delivering it or by mailing it by first class mail to Lender's address stated on the first page of this Security Instrument unless Lender has given me notice of another address. Any notice in connection with this Security Instrument is given to Lender when it is actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Law That Governs this Security Instrument; Word Usage. This Security Instrument is governed by federal law and the law of New York State. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might allow the parties to agree by contract or it might be silent, but such silence does not mean that Lender and I can't agree by contract. If any term of this Security Instrument or of the Note conflicts with Applicable Law, the conflict will not affect other provisions of this Security Instrument or the Note which can operate, or be given effect, without the conflicting provision. This means that the Security Instrument or the Note will remain as if the conflicting provision did not exist.

As used in this Security Instrument: (a) words of the masculine gender mean and include corresponding words of the feminine and neuter genders; (b) words in the singular mean and include the plural, and words in the plural mean and include the singular, and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. I will be given one copy of the Note and of this Security Instrument.

18. Agreements about Lender's Rights If the Property Is Sold or Transferred. Lender may require: Immediate Payment in Full of all Sums Secured by this Security Instrument if all or any part of the Property or if any right in the Property, is sold or transferred without Lender prior written permission.

If Borrower is not a natural Person and a beneficial interest in Borrower is sold or transferred without Lender's prior written permission, Lender also may require Immediate Payment in Full However, this option shall not be are exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender requires Immediate Payment in Full under this Section 18, Lender will give me a notice which states this requirement. The notice will give me at least 30 days to make the required payment.

The 30 day period will begin on the date the notice is given to me in the manner required by Section 15 of this Security Instrument. If I do not make the required payment during that period, Lender may act to enforce its rights under this Security Instrument without giving me any further notice or demand for payment.

19. Borrower's Right to Have Lender's Enforcement of this Security Instrument Discontinued. Even if Lender has required Immediate Payment in Full, I may have the right to have enforcement of this Security Instrument stopped. I will have this right at any time before the earliest of: (a) five days before sale of the Property under any power of sale granted by this Security Instrument; (b) another period as Applicable Law might specify for the termination of my right to have enforcement of the Loan stopped; or (c) a judgment baa been entered enforcing this Security Instrument. In order to have this right, I will meet the following conditions:

(a) I pay to Lender the full amount that then would be due under this Security Instrument and the Note as if Immediate Payment in Full had never been required.

(b) I correct my failure to keep any of my other promises or agreements made in this Security Instrument;

(c) I pay all of Lender's reasonable expenses in enforcing this Security Instrument including, for example, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and

(d) I do whatever Lender reasonably requires to assure that Lender's interest in the Property and rights under this Security Instrument and my obligations under the Note and under this Security Instrument continue unchanged.

Lender may require that I pay the sums and expenses mentioned in (a) through (d) in one or more of the following forms, as selected by Lender: (a) cash;(b) money order; (c} certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic funds Transfer,

If I fulfill all of the conditions in this Section 19, then this Security Instrument will remain in full effect as if Immediate Payment in Full had never been required. However, I will not have the right to have Leader's enforcement of this Security Instrument discontinued if Lender has required Immediate Payment in Full under Section 18 of this Security Instrument.

20. Note Holder's Right to Sell the Note or an Interest in the Note; Borrower's Right to Notice of Change of Loan Servicer; Lender's and Borrowers Right to Notice of Grievance. The Note, or an interest in the Note, together with this Security Instrument, may be sold one or more times. I might not receive any prior notice of these sales.

The entity that collects the Periodic Payments and performs other mortgage loan services obligation under the Note, this Security Instrument, and Applicable Law is called the "Loan Servicer." There may be a change of the Loan Servicer as a result of the sale of the Note. There also may be one or more changes of the Loan Services unrelated to a sale of the Note. Applicable Law requires that I be given written notice of any change of the Loan Servicer. The notice will state the name and address of the new Loan Servicer, and also tell me the address to which I should make payments. The notice also will contain any other information required by RESPA or Applicable Law. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to me will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchase unless otherwise provided by the Note purchaser.

Neither I nor Lender may commence, join or be joined to any court action (as either an individual party or the member of a class) that arises from the other party's actions pursuant to this Security Instrument, unless the other is notified (in the manner required under Section 15 of this Security Instrument) of the unfulfilled obligation and given a reasonable time period to take corrective action. If Applicable Law provides a time period which will elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to me under Section 22 and the notice of the demand for payment in payment in full given to me under Section 22 will be deemed to satisfy the notice and opportunity to take corrective action provision of this Section 20. All rights under this paragraph are subject to Applicable Law.

21. Continuation of Borrower's Obligations to Maintain and Protect the Property. The federal laws and the laws of New York State that relate to health, safety or environmental protection are called "Environmental Law.: Environmental Law classifies certain substances as toxic or hazardous. There are other substances that are considered hazardous for purposes of this Section 21. These substances are gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. The substances defined as toxic or hazardous by Environmental Law and the substances considered hazardous for purposes of this Section 21 are called "Hazardous Substances." "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law. An "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not do anything affecting the Property that violates Environmental Law, and I will not allow anyone else to do so. I will not cause or permit Hazardous Substances to be present on the Property. I will not use or store Hazardous Substances on the Property. I also will not dispose of Hazardous Substances on the Property, or release any

Hazardous Substance on the Property, and I will not allow anyone else to do so. I also will not do, nor allow anyone else to do, anything affecting the Property that: (a) is in violation of any Environmental Law; (b) creates an Environmental Condition; or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The promises in this paragraph do not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized as appropriate for normal residential use and maintenance of the Property (including but not limited to, Hazardous Substances in consumer products). I may use or store these small quantities on the Property. In addition, unless Environmental Law requires removal or other action, the buildings, the improvements and the fixtures on the Property are permitted to contain asbestos and other asbestos-containing materials if the asbestos and asbestos-containing materials are undisturbed and "non-friable" (that is, not easily crumbled by hand pressure),

I will promptly give Lender written notice of: (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge; (b) any Environmental Condition, but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If I learn, or any governmental or regulatory authority, or any private party, notifies me that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I will promptly take all necessary remedial actions in accordance with Environmental Law.

Nothing in the Security Instrument creates an obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS

I also promise and agree with Lender as follows:

22. Lender's Rights If Borrower Fails to Keep Promises and Agreements. Except as provided in Section 18 of this Security Instrument, if all of the conditions stated in subsection (a), (b) and (c) of this Section 22 are met, Lender may require that I pay immediately the entire amount then remaining unpaid under the Note and under this Security Instrument. Lender may do this without making any further demand for payment. This requirement is called "Immediate Payment in Full."

If Lender requires immediate Payment in Full, Lender may bring a lawsuit to take away all of my remaining rights in the Property and have the Property sold. At this sale Lender or another Person may acquire the Property. This is known as "Foreclosure and Sale." In any lawsuit for Foreclosure and Sate, Lender will have the right to all& all *costs* and disbursements and additional allowances allowed by Applicable Law and will have the right to add all reasonable attorneys' fees to the amount I owe Lender, which fees *shall* become part of the Sums Secured Lender may require Immediate Payment in Full under this Section 22 only if an of the following conditions are met:

(a) I fail to keep any promise or agreement made in this Security Instrument or the Note, including, but not limited to, the promises to pay the Sums Secured when due, or if another default occurs under this Security Instrument;
(b) Lender sends to me, in the manner described in Section 15 of this Security Instrument, a notice that states:

(1)The promise or agreement that I failed to keep or the default that has occurred;
(2) The action that I must take to correct that default;
(3) The date by which I must correct the default. That date will be at least 30 days from the date on which the notice is given;
(4) That if I do not correct the default by the date stated in the notice, Lender may require Immediate Payment in Full, and Lender or another Person may acquire the Property by means of Foreclosure and Sale;
(5) That if I meet the conditions stated in Section 19 of this Security Instrument, I will have the right to have Lender's enforcement of this Security Instrument stopped and to have the Note and this Security Instrument remain fully effective as if Immediate Payment in Full had never been required; and

(6) That I have the right in any lawsuit for Foreclosure and Sale to argue that I did keep my promises and agreements under the Note and under this Security Instrument, and to present any other defenses that I my have; and

(c) I do not correct the default stated in the notice from Lender by the date stated in that notice.

23. Lender's Obligation to Discharge this Security Instrument. When Lender has been paid all amounts due under the Note and under this Security Instrument, Lender will discharge this Security Instrument by delivering a certificate stating that this Security Instrument has been satisfied. I will pay all costs of recording the discharge in the proper official records. I agree to pay a fee for the discharge of this Security Instrument, if Lender so requires, Lender may require that I pay such a fee, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted by Applicable Law.

24. Agreements about New York Lien Law. I will receive all amounts lent to me by Lender subject to the trust fund provisions of Section 13 of the New York Lien Law. This means that I will: (a) hold all amounts which I receive and which I have a right to receive from Lender under the Note as a trust fund, and (b) use those amounts to pay for "Cost of Improvement" (as defined in Section 13 of the New York Lien Law) before I use them for any other purpose. The fact that I am holding those amounts as a trust fund means that for any building or other improvement located on the Property I have a special responsibility under the law to use the amount in the manner described in this Section 24.

25. Borrower's Statement Regarding the Property [check box as applicable].

X_ This Security Instrument covers real property improved, or to be improved, by a one or two family dwelling only.

___This Security Instrument covers real property principally improved, or to be improved, by one or more structures containing, in the aggregate, not more than six residential dwelling units with each dwelling unit having its own separate cooking facilities.

____This Security Instrument does not cover real property improved as described above.

BY SIGNING BELOW, I accept and agree to the promises and agreements contained in pages 1 through 27 of this Security Instrument and in any Rider signed by me and recorded with it.

Witnesses:

Witnesses:

____

____________________ (Seal)
LEONARD W. HOUSTON -Borrower

____

____________________ (Seal)
-Borrower

____________________ (Seal)
-Borrower

____________________ (Seal)
-Borrower

____________________ (Seal)
-Borrower

____________________ (Seal)
-Borrower

____________________ (Seal)
-Borrower

____________________ (Seal)
-Borrower

Exhibit A

Application Number: 1004225
Tax ID Number: Section 63 Block 1 Lot 1.26
Grantee Name(s): Louis Houston, Sr. and Leonard W. Houston
Property Address: 148 Deer Court
Middletown, NY 10940

Legal Description

THE UNIT KNOWN AS RESIDENTIAL UNIT NO. 148 (HEREINAFTER CALLED THE 'UNIT') LOCATED IN DEER COURT, IN THE CITY OF MIDDLETOWN, COUNTY OF ORANGE AND STATE OF NEW YORK (HEREINAFTER CALLED THE 'PROPERTY') AND ALSO DESIGNATED AND DESCRIBED AS RESIDENTIAL UNIT NO. 148 IN THE DECLARATION COMPRISING DEER RUN MADE BY DEER RUN CORP., UNDER THE CONDOMINIUM ACT OF THE STATE OF NEW YORK (ARTICLE 9-B OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK) DATED THE 4TH DAY OF MAY, 1989 AND RECORDED IN THE OFFICE OF THE COUNTY CLERK OF THE COUNTY DIVISION OF LAND RECORDS, ON THE 4TH DAY OF JUNE 1989, IN LIBER 3145 OF CONVEYANCES AT PAGE 29 (HEREINAFTER CALLED THE DECLARATION), WHICH UNIT IS ALSO DESIGNATED AS TAX LOT NO. 63-1-1.26 ON THE FLOOR PLANS OF THE BUILDING PREPARED AND CERTIFIED BY BARRY PROSKAUZER, AIA, ARCHITECT, ON THE 15TH

DAYOF JUNE, 1988 AND FILED SIMULTANEOUSLY WITH SAID DECLARATION IN THE OFFICE OF THE COUNTY CLERK OF ORANGE COUNTY DIVISION OF LAND RECORDS AS MAP NO. 9543.

STATE OF NEW YORK, Orange County ss:

On the 29 day of May 2005 before me, the undersigned, a notary public in and for said state, personally appeared

LEONARD W. HOUSTON,

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged tome that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual (s) acted, executed the instrument.

ecuted the instrument.

Notary Public

COLLEEN BENNETT
Notary Public, State of New York
No. 01BE6077249
Qualified in Westchester County
Commission Expires July 8, 2006

Tax Map Information: SEC 63 BLK 1 LOT 1.26

CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this 29th day of May, 2004 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the Borrower") to secure Borrower's Note to Aames Funding Corporation DBA Aames Home Loan (the "Lender") of the same date and covering the Property described in the Security Instrument and located at: 148 Deer Court, Middletown, NY 10940
The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:
Deer Run Condominium
(the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's Interest.

CONDOMINIUM COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and lender further covenant and agrees as follows:

A. Condominium Obligations. Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The

"Constituent Documents" are the: (1) Declaration or any other document which creates the Condominium Project: (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a general accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage." And any other hazards, including, but not limited to, earthquakes and floods from which lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property: and (if) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender tot the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public Liability Insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay condominium dues and assessment when due, the Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secure by the Security Instrument. Unless Borrower and Lender agree to other terms of payment these amount shall bear interest form the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

By SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Condominium Rider.

________________(Seal) LEONARD W. HOUSTON -Borrower	________________(Seal) -Borrower
________________(Seal) -Borrower	________________(Seal) -Borrower
________________(Seal) -Borrower	________________(Seal) -Borrower
________________(Seal) -Borrower	________________(Seal) -Borrower

ADJUSTABLE RATE RIDER (LIBOR 6 Month Index (As Published In The Wall Street Journal) -Rate Caps)

THIS ADJUSTABLE RATE RIDER is made this 29th day of May 2004 ,and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower")to secure Borrower's Adjustable Rate Note (the "Note") Aames Funding Corporation DBA Aames Home Loan (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

148 DEER COURT, MIDDLETOWN, NY 10940

> **THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE THE BORROWER MUST PAY.**

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 10.180 5%. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the 1st day of July, 2006, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for 6 month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent Index figure available as of the first **MULTISTATE ADJUSTABLE RATE RIDER-LIBOR 6 MONTH INDEX (AS PUBLISHED IN THE WALL STREET JOURNAL)** -Single Family business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new Index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes.

Before each Change Date, the Note Holder will calculate my new interest rate by adding Six and 350 Thousandths percentage point(s) (6.350 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be meant to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes.

The interest rate I am required to pay at the first Change Date will not be greater than 13.180 % or less than 10.180 96. Thereafter, my interest rate wilt never be increased or decreased on any single Change Date by more than One percentage point(s) (1-000 5%) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 16.180 96 or less than 10.180%.

(E) Effective Date of Changes

My new interest rate will become effective an each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER. Uniform Covenant 17 of the Security Instrument is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in fall of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the Loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay be sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

_______________ (Seal) LEONARD W. HOUSTON -Borrower	_______________ (Seal) -Borrower
_______________ (Seal) -Borrower	_______________ (Seal) -Borrower
_______________ (Seal) -Borrower	_______________ (Seal) -Borrower
_______________ (Seal) -Borrower	_______________ (Seal) -Borrower